

# Public Utilities

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## Facts about Public Ownership of Electric Utilities

Analysis of character of the information available to municipal officers as to actual results of operation of electric utilities now owning their own plant.

By HENRY E. RIGGS

**I**N view of the renewed activity in the promotion and construction of municipally owned electric light and power plants in communities ranging in size from the small village of one thousand population or less to cities of many thousands, it seems not amiss to investigate the available sources of information as to the actual results of municipal operation of electric utilities in cities now owning their own plants.

NOTE.—Since this article was written the Federal Census of Electrical Industries has been issued. There was also issued late in September, 1934, a most comprehensive report on Michigan Municipal League Utilities prepared by the Michigan Municipal League. This is League Bulletin R-4. It bears out all of the author's figures.

There has recently been great activity on the part of certain engineering firms and manufacturers of power plant equipment in the dissemination of information regarding existing plants much of which is misleading in the extreme. Citizens and public officials in communities considering the investment of sums ranging from fifty thousand dollars to a million dollars or more in such plants are entitled to correct information, properly analyzed, as to actual results obtained in cities which are comparable as to size, character of population and industry, and as to probable volume and classification of sales.

In general these officials do not

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have the knowledge or experience which qualifies them to analyze reports or to see where data furnished may be very inaccurate and misleading, and many of them fail to recognize the fact that the interest of the promoters is solely a selfish one, that of securing an engineering job or of selling equipment.

**T**HE writer, while he is not an advocate of new municipal construction of electric plants, fully recognizes the fact that there is a goodly number of well-designed, well-built, excellently managed municipal electric light plants which are giving good service at rates as low or lower than those of commercial companies in the same territory.

In order to understand why this is so it is necessary to recall the fact that the first electric plant was put in operation in 1881, that during the next twenty-five years there was great activity in the construction of both municipal and commercial plants, and that, in this period, the plants that were built were essentially local utilities in the communities served. The great majority of the commercial plants were owned and operated by home companies with a considerable part if not all of the capital furnished by local citizens. Many communities wishing and needing electric service built the plants as publicly owned utilities.

A study of the United States Census bulletins on the electrical industry gives certain reliable general statistics as to the industry, but nothing at all as to individual plants. These bulletins show the increase in the number of municipal plants as set forth in Table I.

TABLE I  
INCREASE IN MUNICIPAL LIGHT AND  
POWER PLANTS

	<i>Net Increase in Period</i>	<i>Total at End of Period</i>
1881 to 1887 .....	50	50
1887 to 1892 .....	185	235
1892 to 1897 .....	273	508
1897 to 1902 .....	207	715
1902 to 1907 .....	537	1,252
1907 to 1912 .....	310	1,572
1912 to 1917 .....	756	2,318
1917 to 1922 .....	263	2,581
1922 to 1927 .....	-383	2,198
1927 to 1932 .....	-396	1,802

**A** LARGE number of municipal plants built between 1881 and 1905 or 1910 which have survived have paid off all or a large part of their bond issues during years in which high rates were charged to the consumers, a number of them have established substantial reserves, most of them have accumulated a comfortable surplus, and such properties, in good towns and under proper management, are the successful municipal plants of the present day. From twenty-five to forty-five years old, the actual capital investment was far less than it would be today, and with no present interest or sinking-fund requirements, and no taxes or but small amounts of taxes, such plants can and a number of them do give service at extremely low rates. They are not in the least comparable with new plants to be built in 1934 in towns of similar size, most of which will, to a considerable extent, be competitive and will have to give rates and service comparable with those of commercial companies, and all of which will have to provide for fixed charges and sinking funds on the greatly higher cost of 1934 over 1910.

To represent to the citizens of a city that a new municipal plant can from

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the outset, or within a few years, make as good a showing as is made by these old plants is wholly wrong and unjustifiable. This representation is being made by business-seeking promoters today and is a practice that should be severely condemned.

**B**EFORE passing from Table I it will be noted that municipal establishments show a sharp decrease in recent years. The development of long-distance power transmission began to be very marked about 1910, and the advance has been most rapid since then. Large electric power systems, some of them statewide, have acquired both small commercial and municipal plants.

The decrease shown in Table I in the *total number* of municipal plants does not tell the whole story of the large number of failures of municipal operation. In Michigan, for example, the municipal plants now in operation constitute only *one third of the total number* of municipal plants that have been built.

Many states do not require publicity of statistics of municipal plants and in all such states accurate information as to the results of operation is hard to get. Where there is no authoritative data city officials naturally

accept gladly any statistics that are available. One such source of information as to municipal plants which appears to be widely circulated is a booklet issued by Burns & McDonnell, an engineering firm, which actively advocates municipal ownership.

**T**HIS pamphlet of 88 pages, issued in 1933, lists certain information as to 222 municipally owned plants. On page 2 is this statement:

The list is not selected as those having an especially good record, but taken at random over a wide territory as a fair cross section of what over two thousand municipalities are doing toward relieving the burden of taxes, and furnishing light, heat, and power at a reasonable rate.

This book is one that will bear analysis, and the writer has had occasion to carefully examine it. His conclusions regarding it are as follows:

1. There is nothing in this book to show that the burden of taxes has been relieved in any of these towns.

2. There is nothing in the book to show that rates are any more reasonable than privately owned utilities are charging in the same territory. The only comparison with commercial utilities is on page 6, where the figures as shown below are given.

Burns & McDonnell do not give



Average Cost per Resident Consumer Per Month for 50 kw. hr. 5-Room	Average Cost per Commercial Consumer 250 kw. hr. 3 kw. Demand	Average Income per kw. hr. Generated Cents	Average Income per kw. hr. Sold Cents
(1)	(2)	(3)	(4)
Average revenue per kw. hr. United States (Electrical World) Jan. 1932 .....	....	2.46	2.84
Average revenue per kw. hr. above 222 plants .....	2.51	11.82	2.23
		2.23	2.69

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any classification by population. When a study is made based on population groupings the above average figures for the 222 cities change substantially as shown below in Table II.

No comment on these figures seems to be necessary. The recent releases by the Bureau of the Census of Statistics of the 1932 bulletin of electrical industries is the best authority as to comparative costs of the two utility groups. This comparison appears in Table III.

TABLE III  
SALES TO THE ULTIMATE CONSUMER

	<i>Revenue per kw. hr.</i>	
	<i>Commercial Municipal</i>	
	Cents	Cents
Total—all energy .....	2.7	3.1
Farm service .....	2.8	5.6
Domestic .....	5.6	4.7
Commercial .....	4.3	2.6
Power .....	1.5	1.7
Street lighting ..	4.7	2.1
Street railway ...	0.9	1.1

These figures show the average for the United States for all properties of both groups. In each case of proposed new construction the study

must be locally made and comparison of municipal and commercial operation must be for the state and the local territory.

3. The statement in the Burns & McDonnell book that cities are selected "at random" and represent a "fair cross section" of municipal ownership is hard to accept. Michigan and New York may be taken as examples.

In Michigan a total of 151 municipal plants have been built, of which 102 have either been sold to commercial companies or dismantled. Of the 49 existing municipal plants selling energy to consumers this book carefully selects 11. Six of the 8 municipal plants in cities of more than 10,000 population are included, as are 4 of the 12 in cities between 3,000 and 10,000. But one of the 29 plants in villages of less than 3,000 is included, that at Crystal Falls, 2,995 population. This is a hydro plant which shows operating revenues of \$56,345 and expenses of \$12,987. It has no debt, no fixed charges, and no taxes, and its rates are among the



TABLE II

	<i>Col. 1</i>	<i>Col. 2</i>	<i>Col. 3</i>	<i>Col. 4</i>
4 cities (Los Angeles, Seattle, Tacoma, Cleveland) .....	1.79	9.81	1.73	2.02
8 cities over 100,000 (including 4 above) .....	2.14	10.08	1.85	2.28
8 cities 50,000 to 100,000 population .....	2.27	11.08	2.50	3.39
10 cities 25,000 to 50,000 population .....	2.60	11.23	2.93	3.47
53 cities 10,000 to 25,000 population .....	3.07	13.36	3.17	4.18
63 cities 5,000 to 10,000 population .....	3.31	13.73	3.32	4.31
74 cities under 5,000 population ....	3.77	15.38	3.78	5.16



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TABLE IV

COMPARISON OF KILOWATT-HOUR COSTS IN NEW YORK MUNICIPAL PLANTS

	<i>General Consumers</i>	<i>Avg. All Energy</i>
	Cents	Cents
4 cities over 10,000 population in Burns & McDonnell book	3.26	3.02
2 cities over 10,000 population not included .....	6.83	4.84
Average 6 cities over 10,000 population .....	3.75	3.36
Average 6 cities 5,000 to 10,000 population .....	4.25	3.66
Average 12 villages 2,000 to 5,000 population .....	4.48	4.11
Average 28 villages less than 2,000 population .....	4.90	4.38



lowest of the public ownership plants in the state.

A COMPARISON has been made by determining the cost per month per residential consumer for lighting a 5-room house, using 50 kilowatt hours per month, and the cost per commercial consumer per month for 250 kilowatt hours on 3-kilowatt demand, applying the rates now in effect in each town. The averages are as follows:

	<i>Residential</i>	<i>Commercial</i>
The 11 cities selected by		
Burns & McDonnell ..	\$2.75	\$12.65
The 38 cities not included	3.67	15.09

These 11 plants are from twenty-five to forty-three years old, high rates prevailed in the years when bonds were being retired, all of them have a substantial surplus, and most of them provide adequate retirement reserves, one of them setting aside approximately 6 per cent per year, and only 2 have any outstanding bonds, and these for an insignificant part of the cost.

The 38 plants not described in the book, with only four or five exceptions can hardly be classed as highly successful. Comparison with towns of the same class served by the large commercial companies would show better service and better rates from the commercial companies. Certainly the Michigan selection in the Burns & McDonnell book was hand picked.

THE New York list of four cities includes four of the six cities of over 10,000 population having municipal plants. In New York all municipal plants report to the public service commission, and complete data as to all plants in the state, are available. The commission does not require classification of sales as domestic, commercial, and power, but all general consumers are grouped. Comparison is made on the basis of revenue per kilowatt hour from all general consumers, and revenue per kilowatt hour for all current used. In some cities there is a very large consumption of energy for municipal purposes from which no

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revenue is derived, hence the showing of the second column is less than if only energy sold were considered. This comparison appears in Table IV as shown on page 655.

**T**HIS looks as though the selection by Burns & McDonnell as their "cross section" for New York has been carefully chosen. New York's public service commission does give very complete data, so that the Burns & McDonnell data should mislead no one in that state.

4. For purposes of determining comparability of existing successful plants with proposed new ones the data should furnish operating and maintenance expenses in detail, the size and type of generating plant, full detail as to fixed capital, and information as to local conditions and character and extent of industry. Without full information certainty of comparability is out of the question. This Burns & McDonnell book gives none of this information.

5. There are too many "round" figures to give one confidence in the accuracy of the information furnished. To use a few illustrations: Athens, Alabama, had 700 domestic, 100 commercial, and 50 power consumers, and has a gross profit of \$15,000. No further data is given. Denison, Iowa, reports gross profit of \$30,000, or 10 per cent on a reported plant value of \$300,000. Chetopa, Kansas, has 300 services, a revenue of \$17,800, operating expense of \$8,000 and a consequent gross profit of \$9,800. Henderson, Kentucky, is said to have 3,500 services, to use 5,500,000 kilowatt hours, secure a revenue of \$165,000, have an operat-

ing expense of \$85,000, and a gross profit of \$80,000. From this Burns & McDonnell have taken \$22,000 or 4 per cent of the book value as depreciation. Canton, Miss., shows residential, commercial, power, and street lighting revenues in even thousands of dollars, totaling \$64,000 with an even \$40,000 operating expense.

**I**T is evident from a careful examination of this book that the information was obtained by correspondence and that little or no investigation was made of the underlying records. In many cases those furnishing the figures evidently resorted to estimate. In many other cases the meagerness of data indicates either the impossibility of obtaining accurate information or the unwillingness of plant officials to give out information.

6. There is nothing in this book to indicate the physical condition of the properties. The accumulation of depreciation or obsolescence without providing reserves or surplus accounts for the failure of many municipal properties. Nothing is here given to throw any light on this all important subject.

7. There is nothing in this book to show the actual practice in each plant in the matter of charging expense for depreciation, and nothing to show accumulated reserves or surplus.

On page 2 it is said:

In this year's book we are also showing the net profit by allowing for interest and depreciation. Where known we have used the actual interest paid by the city and the depreciation set aside. Where not shown we have allowed 5 per cent interest on the indebtedness and 4 per cent depreciation on the value of the system.

**E**XAMINATION of the book shows that this adjustment is not made

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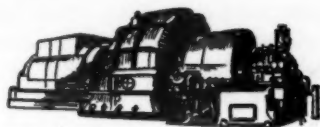


TABLE V

	<i>Commercial Establishments</i>	<i>Municipal Establishments</i>
Number of establishments .....	1627	1802
Percentage of total establishments .....	47.45%	52.55%
Percentage of total customers, farm service .....	96.57%	3.43%
Percentage of total customers, domestic service ..	89.90%	10.10%
Percentage of total customers, commercial service ..	93.10%	6.90%
Percentage of total customers, wholesale power ..	96.21%	3.79%
Percentage of total kw. hr. of energy sold .....	94.31%	5.69%
Percentage of kw. hr. used in farm service .....	98.93%	1.07%
Percentage of kw. hr. used in domestic service ...	88.30%	11.70%
Percentage of kw. hr. used in commercial service ..	89.50%	10.50%
Percentage of kw. hr. used in power .....	98.61%	1.39%
Percentage of kw. hr. used in street lighting .....	78.11%	21.89%
Percentage of kw. hr. used in railroad power, etc.	97.49%	2.51%
Percentage of total revenue from sale of energy ..	93.53%	6.47%
Percentage of fixed capital invested .....	95.74%	4.26%



in the case of 33 plants. In some of the cases the result is called gross profit, in others net profit. The result of this adjustment is that it is impossible to tell what plants use the reserve and which ones have none. Actually the very excellent municipal plant at Lansing, Michigan, had a credit balance of \$3,461,368 in its reserve as of June, 1932, and appropriates approximately \$600,000 per year for depreciation. Such facts ought to be shown for all the plants, and where no reserves have been created it should be made clear.

8. The book carefully refrains from any discussion of the failure of municipal plants and the sale of hundreds of them to commercial companies in recent years.

To summarize: This book is pure propaganda and advertising literature for an engineering firm which advocates wholesale construction of mu-

nicipal plants. It does not give any of the basic data needed for comparing a proposed new plant with existing plants.

The citizens of a community that is considering the building of a new plant may well ask, Where can accurate information be obtained that is not supplied by the industry itself? And the answer to that question is not easy.

**F**EDERAL statistics are limited to the bulletins of the Census Bureau. Every five years a census of the electrical industry is reported. These bulletins furnish an interesting history of the industry. All information is general, covering the country as a whole, several groups of states, and the individual states. Nothing is given as to individual properties. Indeed, certain states having only one or two municipal plants have been grouped to-

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gether in some of the bulletins so that data as to individual plants could not be secured. (See Report for 1907, page 165, where Rhode Island, Idaho, and Montana are grouped "in order that the operation of individual stations may not be disclosed.")

These Federal statistics are of no service in comparing single plants but they constitute the most authoritative source of information as to comparable statistics of all of the commercial and all of the municipal plants.

Within the past few weeks the writer has listened to honest but misguided city officials declare that municipal plants were more numerous and important than commercial plants. At the present time the Census Bureau is issuing releases of preliminary information as to the forthcoming volume of the 1932 Census. From these releases the comparative data shown in Table V has been compiled. (See page 657.)

**I**T must be remembered that "the term 'number of reporting establishments' refers to ownership or control, consequently, in many cases, a commercial establishment represents 2 or more generating stations or distributing systems." There are 1,627 commercial "establishments" covering 4,350 generating stations for 1932, many of them of immense capacity and capable of producing more energy than the combined capacity of scores of the smaller municipal plants.

These figures indicate the relative magnitude of the two groups. The municipally owned group, having only 4.26 per cent of the total investment, sell 5.69 per cent of the total energy and receive 6.47 per cent of the total

revenue from the sale of electric current. The revenue per kilowatt hour for all business is, commercial companies 2.7 per kilowatt hour, municipal plants 3.1 per kilowatt hour. These figures are Federal statistics for 1932.

**S**TATE public service commission reports for Connecticut, Indiana, Maine, Maryland, Massachusetts, New York, and Wisconsin give quite full and satisfactory statistics of municipal electric properties. Colorado, Montana, Nevada, New Jersey, and Vermont give some statistics but are far from being complete reports. The commissions of none of the other thirty-six states report any statistics if they are available, and in most states they are not.

Municipal authorities who are contemplating the construction of new plants are entitled to have access to full, complete, and authoritative statistics of operating plants in comparable cities in order that they may intelligently pass upon the desirability and probable financial success of a new plant. That data should include investment, income account, balance sheet, detailed revenues and expenses, details of fixed capital, and complete operating statistics.

The citizens of any community which has made a large investment in a municipal plant have every right to have access to the same information, not only as to their own plant, but as to all others that they may know how the operations of the home plant compare with those of like communities.

**T**HE accounting and statistical records of commercial plants are

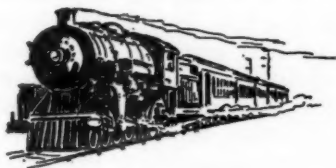
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kept under rigid rules prescribed by the utility commissions and under their direction. In most of the states there are no prescribed accounting rules for municipal utilities. Some of the larger properties have adopted accounting classifications similar to those prescribed for the commercial utilities. The great majority of the smaller municipal plants have no proper or adequate records. Where these books are kept by the village clerk or some locally appointed official who is bound by no prescribed classification and who knows nothing about the industry it is inevitable that in many cases the records are worthless, and accurate information as to what the plant is actually doing is impossible to obtain.

There is no sound reason why the authority of the state public utility commissions should not be extended to the regulation and control of the accounting and statistics of all utility plants whether commercial or municip-

pal. It is wholly in the public interest that both groups give the utmost publicity to statistics and that both groups use the same form of accounting and statistical records. This can be done by bringing all plants under the jurisdiction of the commissions.

**I**F we are going to turn to public ownership to get a "yardstick" by which to measure commercial operation then we must make that yardstick a standard that all can measure by. In accounting and in statistical records it must be perfect. It must be a public standard that every citizen can use, and it must be available at all times to all who need it. The writer firmly believes that the only way in which this can be done is by the extension of the authority of the utility commissions to cover all publicly owned utilities at least as regards accounting classifications and the keeping records of and giving full publicity to complete statistical records.



### Taxes and Dividends Paid by the Steam Railroads

**S**TEAM railroads paid \$249,602,895 in taxes in 1933, as compared to \$275,135,399 in 1932. In 1931 they paid \$303,528,099, in 1930—\$348,553,953, and in 1929—\$396,682,634.

Cash dividends paid by the steam railroads showed a much greater decline than taxes, particularly in 1932, when \$92,354,322 was paid in dividends as compared to \$330,150,873 in 1931. Last year there was a slight increase over 1932, \$95,533,622 being paid in dividends. In 1930 the total was \$497,024,912, which exceeded the 1929 total by some seven million dollars.

—REPORTS OF THE I. C. C.,  
Committee on Public Relations of the  
Eastern Railroads.



## "Let's Sit Down and Reason"

The practical method by which the Bay State's telephone problems have been solved.—  
Party lines and listening in.

By WILLIAM H. O'BRIEN

DIRECTOR OF TELEPHONE AND TELEGRAPH UTILITIES,  
MASSACHUSETTS DEPARTMENT OF PUBLIC UTILITIES

**I**T may be said without exaggeration that Massachusetts has handled the problems of telephone service in a practical manner; that it has brought good results to telephone users, and that it has also been of great help to the telephone company.

Unlike other state regulatory bodies of the country which have attempted to do anything with telephone service, Massachusetts established a department manned by practical telephone and telegraph men who had specialized on service problems in a practical way, while the other states handled the telephone from an engineering standpoint with engineers and the head of the telephone departments.

The telephone and telegraph division of the Massachusetts commission has been on the job over twenty-one years and has carried on its work with the idea that every time it helped the telephone company to do a better job it was helping the business subscriber in a bread-and-butter way and that it was bringing a cor-

responding benefit to resident subscribers.

The division has successfully handled about 30,000 specific cases involving every ramification of telephone service, accounting, collection practices, shortage of facilities, special construction charges, etc. In the last thirteen years the department has successfully handled over 21,000 cases without a single appeal to the full board. Actual figures show that as a result of these recommendations of the department reductions were made in various rates and charges amounting to \$1,231,000 since the last general rate decision of 1925.

**I** HAVE very pleasant recollections of the many human phases of my work during my years in the department. When the old public service commission in 1913 was organizing the telephone and telegraph division, I was told by the chairman that I was the commission's choice for head of the division but that one of the commissioners—a very high-grade lawyer



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—did not care to vote for me because he feared criticism owing to the fact that I was then with the Bell System. The chairman suggested that I talk with this member of the commission. I did. Although he was a valued friend of mine he said he was doubtful of the propriety of taking a man from the telephone company to head the new division. I said to him:

"Where would you naturally expect to get a man for the head of the telephone-telegraph division? Would it be from a lawyer's office or a brick-layer's union?"

Without answering he picked up the telephone and put through a call to the chairman saying: "Record my vote for Billy O'Brien. He has just handed me a crack between the eyes." He informed me recently that he had told that story many times in the years that followed.

When we started work the telephone officials were not very enthusiastic about what they called our "interference"; but it was not long before they found that our purpose was to help. There has since been a very fine spirit of coöperation on their part. When a complaint comes to the department we first ask if the matter has been taken up with the telephone company and what happened. We always give the company a chance.

As far as the public was concerned it was slow to make use of the services of the commission for the simple reason that it lacked faith in the commission. As in most sections of the country the rank and file of the people had become pretty well saturated with the idea that all public officials elected or appointed are under

the control of utility corporations and that consequently not much help can be expected from them. This lack of faith has been very unfortunate and has been difficult to remove. In addition it is lamentable that only a small portion of the people know anything about the work of these departments, their authority, and the things they can do. That is one of the reasons why we deemed it wise to establish and continue publicity activities through the years.

IN the years immediately preceding the war, in the larger communities, telephone subscribers were quite rapidly changing from 6-party to 4-party lines and grading down to single-party lines; but the war set us back and so it became necessary to do something to reduce holding time on unlimited party-line service. We therefore began a campaign of education to bring home to these subscribers the fact that all parties on party lines are entitled to a fair share of the time. In our educational work we tried to get the average party-line subscriber to understand that he is only a commuter on that line, like the commuters who travel on a railroad train, trolley, or bus. We developed a lot of publicity under the slogan "Tell it all in five minutes and give your neighbor a chance." We have had plenty of evidence to show that good results have come from this work.

IT is true, though, that many men and women, fair minded in most things, seem to feel that they have an exclusive right to all the time on their telephone line. They get awfully peeved when someone tries to con-

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vince them that this is not so. Very seldom do they pay any attention to a request from the telephone company; but invariably they get the right idea when one of our inspectors shows up.

One time a prominent city official of Boston came to see me with a complaint that his wife could not get a look in on their 2-party line. One of our inspectors observed the line. One evening was sufficient. One lady on the line made two calls, one lasting seven minutes and the other two hours and twenty-one minutes. She happened to be the wife of the gentleman who complained. As to what happened? Well—let it go at that.

The proper use of party lines continues to be important because the depression has practically stopped the regrading of telephone lines, which means that we are still far below the service standards we would have enjoyed had not the war practically stopped the movement toward single-party service.

Following the war, with over 60,000 persons in Massachusetts waiting for telephone service, we had to require 1-party-line subscribers to change to 2-party, 2-party to 4-party, etc. I guess we were the only commission in the country to adopt such a policy; but it was adopted on the theory that, with the exception of ministers,

priests, doctors, and nurses, no citizen was entitled to enjoy full service while his neighbor was without any service.

**I** REMEMBER one case of a prominent well-to-do widow with homes in Boston and two other places. Near one of her country homes lived a family with a son who had just returned from the war badly shot up. Everything was plugged in that section; so we had to notify the lady that her special line would have to be shared with the soldier boy. She hot-footed for her lawyer's office and she and her lawyer came to the state house. I finally had to tell them that the change would be made whether she agreed to it or not and I at last convinced her that in bearing a share of "war burdens" she was no exception.

**I** HAVE another case of this kind in mind. Arrangements were being made to start a candy factory which would employ some fifty persons; but there was not a telephone line to be had. We notified a near-by concern that it would have to give up two of its six lines. Oh boy! The fur began to fly; but the telephone company went through with the change. Then I sent a nice note to the firm whose lines had been taken out and transferred in which I pointed out how patriotic the firm was in giving up the lines. And do you know they pub-



**Q** "WHILE, of course, rates are important and while everybody wants service at the lowest possible charge, after all the real thing is service. If one had to choose between an unreliable telephone service at a low rate and a dependable and efficient service at a higher rate, can anyone doubt what the answer would be?"

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lished that letter in a paid ad in the newspapers of the city!

One of the things always with us is the local mileage involved in the question of base rate areas. We have had splendid results from year to year in invoking the referendum to determine how the great majority of any group feel as to what exchange they would like to be connected with.

**T**HE favorite indoor sport of "listening in" on party lines has always been a source of much trouble. Once where there was a complaint of this kind two of our inspectors trapped a lady who had been suspected of listening in and peddling the information around the neighborhood. When she was caught by a clever piece of work the service was removed.

I spent several days in a rural community a few years ago where it seemed listening in had become epidemic. As a result of my own observation the telephone company took steps to remedy the evil. After a number of disconnections of service had been made, the situation was pretty well cleaned up. All of the local newspapers coöperated.

We are frequently called at our homes at all hours of the night to help subscribers who are having telephone troubles. Not all of these troubles, however, are due to telephone service. One morning at 3:45 o'clock the secretary of a very distinguished public official called my home during my absence and insisted that my daughter who answered the phone require his sweetheart in a nearby city to answer his call. He said he had been ringing for about an hour and that she would not answer.

My daughter tried without result to reach the station. I found out later that the young lady had plugged up the bell at her home knowing that the gentleman in question would call up.

**O**CCASIONALLY we get a call or a letter which we lay aside for a few days, perhaps because of something we know about the person complaining. Later we call the complainant and ask how things are going. Invariably the persons who make these complaints are enthusiastic in their praise of the service "since we called you," when as a matter of fact we have simply applied "absent treatment."

It is very interesting to recall that in the early years of our work the great bulk of complaints related to service, which meant that we had to specialize on service problems with the very gratifying result that in recent years there have been comparatively few service complaints.

While, of course, rates are important and while everybody wants service at the lowest possible charge, after all the real thing is service. If one had to choose between an unreliable telephone service at a low rate and a dependable and efficient service at a higher rate, can anyone doubt what the answer would be?

**I**T will be readily agreed that as important as are transportation, gas, electric light, etc., the most vital artery of our whole industrial structure, to say nothing of our social activities, is telephone service. While the average person, aside from the commuters, uses transportation facilities infrequently, the business



### Friends in the Rôle of Complainants

**"I** was pretty difficult . . . to wean the telephone officials from the idea that the King can do no wrong; and from the idea that the complainant against telephone service or actions of telephone officials is an enemy. If public utility officials could only get it into their minds that those who complain to them of service, giving them a chance to correct the trouble, are friends, it would be the greatest progressive step in the development of a better understanding with the rank and file of the public that has ever been taken."

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world is bound up every minute, day and night, in telephone service, which proportionately is just as important and valuable to the little fellow on the side street, with no one to help him in his business, as it is to a great banking or business institution. Those doing the work for the Massachusetts commission have always tried to keep that idea in mind.

**F**ROM time to time we have suggested changes in rules, regulations, and practices that have helped the telephone company and the business man. I am a strong believer in the policy: "Let's sit down and reason together." With that thought uppermost in our minds, the division has handled thousands of very acute telephone service problems without the necessity of public hearings by the full commission.

At first it was hard for the telephone officials to see anything but the company's side of the various cases that came up; but gradually they came to understand that the more they were ready to meet representatives of the state half way, the better their public relations would be, and the better the result to the company and to the stockholders.

It is quite true that the telephone company, despite its publicity (which was perfectly proper and good business) has made little progress in its all-around relations with the public. That has not been because the officials of the company were not eager to secure the good will of the subscribers and to have them understand that if they were not being treated right they could call upon the department of public utilities to adjust their trouble; but because of the general feeling

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against all utility companies which has arisen during the last few years.

**I**T was pretty difficult for the forces of the department of public utilities, handling the telephone problems, to wean the telephone officials from the idea that the King can do no wrong; and from the idea that the complainant against telephone service or actions of telephone officials is an enemy. If public utility officials could only get it into their minds that those who complain to them of service, giving them a chance to correct the trouble, are friends, it would be the greatest progressive step in the development of a better understanding with the rank and file of the public that has ever been taken.

It is quite true, however, that the fellow who tells his troubles to his neighbors or around the drug store or the grocery store or on the train back and forth is an enemy, if one wishes to use that expression. He is spreading a lot of bad feeling against the utilities and giving them no chance to defend themselves or to correct shortcomings.

In the work of the telephone division of the commission it is noticeable that specific complaints have been decreasing from year to year. The installation of the dial service eliminating wrong numbers and the improvement of service in several other ways has very noticeably decreased complaints.

And the inspectors of the division are always on the job. They are constantly going about the state visiting telephone offices, looking over the records to see the number of persons who are waiting for service, and general plant and service conditions. The director of the division has for years been bringing the story of the commission's work to the average of sixty public organizations of every kind and character, civic, fraternal, etc., each year. This is probably the most educational work of this kind that has been done in any part of the United States.

**W**HEN the state took over the problem of telephone regulation in 1907 there were 194,000 telephone stations in Massachusetts, while at the peak in 1930 there were 920,000, about 600,000 business and 320,000 resident subscribers.

Relations between the officials of the telephone company and those handling the telephone end of the problem for the state commission are of the best; and while some of the sessions that take place concerning various telephone matters are quite strenuous, it is always with the feeling on both sides that every adjustment that can be made is for the benefit of both the telephone company and the public.

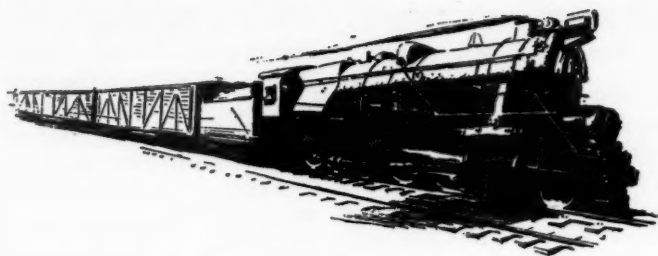
So as I said in the beginning, Massachusetts handles her telephone matters in a practical manner.

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**Q** "FORTUNATELY, natural economic forces usually are stronger than artificial measures adopted either by governments or trade associations, whether under codes or otherwise, and once recovery from a depression gets well under way it is almost as difficult to arrest it as to arrest the decline of business that causes a depression."

—RAILWAY AGE





## Domination of Federal Powers

As shown by court rulings on conflict with  
state authority over state railroad rates

THE principles which have enabled the Federal government gradually to extend its powers over intrastate railroad rates, formerly supposed to have been exclusively within the jurisdiction of the several states, are of interest not only to railroads and to the state commissions but, as the author says, to other utility companies, as they may play a prominent rôle in motor carrier regulation and the transmission of gas and electric power. The author gives the background and points out why this is likely to afford a fertile field for controversy and conflict.

By MARTIN L. LINDAHL

THE current depression in trade and industry, with its particularly devastating effects upon the railways, has brought to the forefront once more the problem of conflict between the state and Federal governments in railway rate regulation.

During the course of the controversy the Interstate Commerce Commission and the Supreme Court have reiterated several constitutional principles governing the disposition of such jurisdictional disputes. These doctrines are of significance not only in the field of railway regulation, but will probably play a prominent rôle in any exercise of Federal authority in the fields of motor carrier regulation and the control of interstate transmission of gas and electric power. They are even now receiving

more than passing attention with respect to the constitutionality of regulatory activities under the National Recovery Act.<sup>1</sup>

Some twenty years ago it was decided by the Supreme Court that under the provisions of the Interstate Commerce Act the commission had the authority to order carriers to remove undue prejudice to interstate localities and persons caused by intrastate rates which were lower than the

<sup>1</sup> See *Texas v. Standard Oil Co.*, 98th Dist. Ct. of Travis County, Texas, October 12, 1933; and *Harry Victor v. Harold L. Ickes*, Secretary of the Interior, Sup. Ct. of the Dist. of Columbia, December 1, 1933. In the latter case it was held that the giving of premiums with the retail sale of gasoline constitutes an unfair method of competition under the rules of the Petroleum Code. It was further held that the giving of premiums with the sale of gasoline in intrastate commerce "may be prohibited by Congress because of its effect upon interstate commerce in petroleum products."



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level of corresponding interstate rates.<sup>2</sup>

The Shreveport decision was made despite the constitutional delegation to Congress of control *only* over interstate and foreign commerce and the express declaration of the Interstate Commerce Act that its provisions shall not apply to the transportation of persons or property wholly within one state.

It was predicated upon the sound and generally accepted notion that wherever interstate and intrastate transactions are so intimately related that the control of one necessarily involves the regulation of the other, it is Congress that shall have the authority to prescribe the dominant rule.

Otherwise, reasoned the court, "Congress would be denied the exercise of its constitutional authority, and the state, and not the nation, would be supreme within the national field."

THE authority of the commission was extended to the entire level of intrastate rates when a "substantial disparity" existed between the interstate and intrastate levels, under the terms of the Transportation Act of 1920, which gave the commission the power to prescribe intrastate rates in order to remove undue prejudice against interstate localities and persons and unjust discrimination against interstate commerce.

This extension of authority was upheld in the Wisconsin case<sup>3</sup> on the ground that the traffic moving on the

lower intrastate rates failed to contribute a "fair proportionate share" to the total cost of rendering transportation. It cast an undue revenue burden upon commerce moving interstate. It thus constituted unjust discrimination against interstate commerce as a whole.

During the last decade the Interstate Commerce Commission has exercised a broad authority over intrastate rates. The power of the state commissions has been restricted to the adjustment of individual intrastate rates on the level found reasonable for interstate rates.

On the whole, the Interstate Commerce Commission has not been overly aggressive in asserting its authority over intrastate matters. Rather, it has coöperated with the state commissions in large measure. It has given them an opportunity to aid in the determination of just rates and to adjust voluntarily the rates under their original jurisdiction to harmonize with those found economically sound for the territory as a whole. Some leeway has usually been permitted to reflect peculiar local commercial or transportation conditions. But the proper exercise of the Interstate Commerce Commission's undisputed authority has come before the courts on several occasions.<sup>4</sup>

IN most instances the Supreme Court has found no basis for allegations that the commission's actions have been arbitrary, the findings

<sup>2</sup> *Houston, E. & W. T. R. Co. v. United States (Shreveport Case [1914])* 234 U. S. 342.

<sup>3</sup> *Wisconsin R. Commission v. Chicago, B. & Q. R. Co.* 257 U. S. 563, P.U.R.1922C, 200.

<sup>4</sup> See *Alabama v. United States* (1929) 279 U. S. 229; *Florida v. United States* (1931) 282 U. S. 194; *Georgia Pub. Service Commission v. United States* (1931) 283 U. S. 765; *Alabama v. United States* (1931) 283 U. S. 776; *Louisiana Pub. Service Commission v. Texas & N. O. R. Co.* (1931) 284 U. S. 125.

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unsupported by evidence, or that the commission has exceeded its powers.

One exception is worthy of note.

In the so-called Florida Log Case<sup>8</sup> the Supreme Court set aside an order of the commission which required the carriers to increase intrastate rates on logs throughout Florida in order to remove unjust discrimination against interstate commerce as a whole. The decision of the court was based on the absence of explicit findings of revenue losses on intrastate commerce.

The commission had declared that unjust discrimination existed, but had made no findings as to the revenue secured from the intrastate traffic or whether increasing the intrastate rates would yield the additional income required to prevent the undue burden upon interstate traffic.

"The raising of rates," as the court pointed out, "does not necessarily increase revenue. It may in particular localities reduce revenue instead of increasing it, by discouraging patronage."

As the very essence of revenue discrimination is the failure of intrastate traffic to contribute its fair share to the revenues of the carriers, it is clear that a showing of greater revenue under increased rates must be made in order to warrant the striking

down of state authority. Obviously, the court was on sound ground in invalidating the commission's order.

THE question of the relationship of rates to income is a very important one, since it affords the basis for the exercise of Federal authority over intrastate commerce in a large body of cases.

This question was most recently considered by the Interstate Commerce Commission and the courts in regard to the situations which arose as a result of the failure of many state commissions to allow the surcharges authorized in the Fifteen Per Cent Case, 1931.<sup>9</sup> It will be recalled that the carriers' petition for a 15 per cent horizontal increase in freight rates was denied by the Interstate Commerce Commission, and that the committee of state commissioners co-operated through joint hearings and conferences concurring in the decision.

In an effort to provide some increase in revenue to meet the dire financial needs of the railroads, however, the Interstate Commerce Commission allowed moderate and varying surcharges upon a wide range of selected commodities. The commission endeavored to choose those com-

<sup>8</sup> (1931) 178 Inters. Com. Rep. 539; (1931) 179 Inters. Com. Rep. 215; (1933) 191 Inters. Com. Rep. 361.



**Q** "WHERE the carriers are seeking to strike down the authority of state regulatory agencies because the lower intrastate rates do not contribute a fair share of the total revenues, it would seem that they have neither economic justification nor a legal remedy unless they show that the interstate increases have yielded greater revenue or that the intrastate increases will result in greater income."

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modities best able to bear temporary increases. It rejected those items most likely to be diverted to competing agencies and those most severely affected by the depression.

The surcharges were authorized on intrastate traffic in a majority of states, but a substantial number of state commissions either failed to grant any emergency relief or excepted certain commodities from the increases.

**R**ATES in thirteen states, principally in the Western District, were alleged to be discriminatory in the original intrastate rate proceedings,<sup>7</sup> and the state authorities in seven states, principally in the South, refused to extend the surcharges from March 31, 1933, to September 30, 1933, an extension allowed by the Interstate Commerce Commission.<sup>8</sup> Other states did not grant surcharges on all the commodities included in the interstate authorization, but the carriers did not deem it worth while to institute proceedings. In many respects the situation did not differ greatly from that which obtained subsequent to Increased Rates, 1920, although the financial condition of the carriers was more acute and the measure of relief extended much less great.

A survey of the evidence in Increases in Intrastate Freight Rates led the commission to the finding that with a few exceptions the disparities between the intrastate and interstate rates caused unfair discrimination against interstate commerce generally.

<sup>7</sup>Increases in Intrastate Freight Rates (1932) 186 Inters. Com. Rep. 615.

<sup>8</sup>Surcharges on Intrastate Traffic within the State of North Carolina (1933) 194 Inters. Com. Rep. 329.

Direct prejudice against shippers and localities in interstate commerce was found to exist in some instances, but because the evidence was fragmentary this course of action was not pursued.

**T**HE evidence which the Federal commission found conclusive of revenue discrimination appeared to be chiefly the carriers' estimates of future revenue gains (or losses on past traffic) based on the application of surcharges to past volumes of intrastate traffic.

For example, the carriers estimated that, based on the traffic of 1931, application of the surcharges on the thirty-seven commodities and all less-than-carload freight excepted by the Louisiana commission would yield something like \$455,000 in additional annual revenue. Railroad traffic men expressed their opinion that this increase in revenue would be realized despite possible diversion of traffic to other means of transport.

This sort of evidence, of course, is open to serious question, particularly in a period of falling commodity prices, exceedingly slack trade, and keen competition from motor carriers, pipe lines, and water carriers. It is predicated upon the assumption that the volume of traffic remains the same under the increased rates, a wholly unwarranted assumption.

**I**T is an elementary principle that the quantity of a given service or commodity demanded decreases as the price increases. But the important consideration is, of course, how rapidly the quantity demanded falls off with higher prices. If the volume of traffic is reduced only slightly with a rate increase, the amount of gross



### Low Rates Favoring State Trade Not Justifiable

**"T**HE maintenance of unduly low intrastate rates for the purpose of favoring intrastate trade and industry is not economically justifiable, for it tends to obstruct the flow of trade in its most advantageous channels and reacts unfavorably upon the financial status of the carriers."

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revenue accruing to the carriers might well be larger than under the lower rates. However, if the volume falls off sharply with an increase in rates the gross income may be very substantially reduced.

**W**HAT is the nature of the demand for railway service when an acceptable substitute such as motor truck carriage is available? It is most reasonable to suppose that it is extremely elastic, that is, the volume of traffic is extremely sensitive to rate changes.

If equally good service can be rendered by two competing agencies, shippers will naturally choose that service which can be secured most cheaply. A disparity in the rates charged by the two agencies which results from the raising of rail rates would, therefore, cause a wholesale transference to motor carriage. In fact, there is reason for supposing that nearly all traffic will be diverted from rail to motor carriers, providing truck

facilities can be expanded to accommodate the entire movement of traffic. And this latter assumption seems to be in accord with the facts, for it is well known that trucking operations have been extended at a phenomenal rate during the last five years. There is a very strong presumption, therefore, that raising rail rates will cause a large diversion to substitute modes of transport with a decidedly adverse effect upon revenues.

The commission was not unaware of the possibility of reduced revenue as a result of the application of the surcharges. In a few instances the exceptions of the state commissions were allowed. The most notable were petroleum oils in Oklahoma and non-ferrous ores and concentrates in Arizona, Idaho, Montana, and Utah. In Oklahoma it was shown that the railroads had reduced numerous intrastate rates in order to retain traffic in petroleum oils for further manufacture which was threatened by motor-truck and pipe-line competition. A

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further and substantial diversion of traffic was feared if surcharges were applied. Exclusion of nonferrous ores and concentrates was permitted because of the depressed condition of the mining industry and severe truck competition, and because the carriers in Arizona declined to contest the decision of the Arizona Corporation Commission.

**B**UT the Interstate Commerce Commission did not meet the issue in a satisfactory manner when it allowed virtually only those exceptions which the railroads, by their acts, had tacitly admitted to be in their best interests.

The state commissions, attempting to exercise some discretion in the premises and acting in good faith, sought to exclude those commodities which they believed would not bear the increases. And there is a strong presumption that local competitive and transportation conditions warranted modification of the Interstate Commerce Commission's order in many cases.

In considering the applications of the carriers for permission to apply the surcharges, the various state commissions were dealing with traffic which is largely short-haul in character. This sort of traffic is particularly vulnerable to truck competition, much more so than long-haul interstate traffic. Taking this factor into account, which is to be expected of state commissioners intimately acquainted with the local situation through their regulation of motor vehicles, the conclusion might well be justified that intrastate traffic should be treated differently than long-haul interstate traffic. This is particular-

ly true of less-than-carload freight, which was excepted by state commissions in a number of instances.

**A**LTHOUGH the Interstate Commerce Commission found unjust revenue discrimination on the strength of the railroads' estimates and opinions, it was unable to find definitely that the increases in rates would yield increased revenues. It was said:

Where we make such a finding (of unjust discrimination against interstate commerce) and require an increase in the intrastate rates, it is to be understood that we conclude that no positive finding in regard to the revenue outcome of the increase can be justified.<sup>9</sup>

The revenue effects could not be ascertained definitely, yet revenue discrimination justifying control of intrastate rates was found to exist. It would appear that the commission had authority to exercise its power only if it found that losses had been incurred or would be incurred as a result of the lower intrastate rates. Yet the commission seemed to deny any such finding by the above statement.

**I**N a general revenue proceeding such as the Fifteen Per Cent Case, 1931, instituted when the carriers are in a grave financial condition, there may be something to be said for allowing increases to be applied at the discretion of the managements of the railroads even though the revenue results are problematical.

Experimentation may show that some of the increases on selected commodities will actually yield more revenue. It is conditioned, however, upon the willingness of the carriers to eliminate the increases if they do not lead to favorable results and to do

<sup>9</sup> 186 Inters. Com. Rep. 615, 627.



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some experimenting with reduced rates, steps which the present managers seem most reluctant to take unless disaster is imminent.

**B**UT where the carriers are seeking to strike down the authority of state regulatory agencies because the lower intrastate rates do not contribute a fair share of the total revenues, it would seem that they have neither economic justification nor a legal remedy unless they show that the interstate increases have yielded greater revenue or that the intrastate increases will result in greater income. As Commissioner Aitchison put it in his dissenting opinion:

The action of the state commissions here vacated is at least as likely to conserve the revenues of the rail carriers as that prescribed by the majority, and in such circumstances, the presumption of validity of the state action with which we start cannot be said to be overcome.<sup>10</sup>

It is true that the findings of the Interstate Commerce Commission were accompanied by a saving clause, which enabled shippers or the state commissions to bring actions to except particular traffic alleged not to have been discriminatory in the first instance. But this is not an altogether practicable or just procedure, for it shifts the burden of proof from the carriers to the shippers and means additional costly litigation and delay, factors which are of particular sig-

nificance when the rates concerned are to run for only a short period.

**T**HE Supreme Court upheld the action of the Federal commission in a unanimous decision in *United States v. Louisiana*,<sup>11</sup> decided on November 6, 1933. It reversed the decision of the lower court,<sup>12</sup> a holding that the commission's order was void because it was not found that the resulting rates would be reasonable or that they would increase the carriers' revenue. The Supreme Court overruled the first objection on the ground that in a general revenue proceeding requiring prompt emergency action, the practicalities of the situation precluded an exhaustive inquiry into the reasonableness of individual rates. It was enough if a sufficiently broad investigation were made to enable the commission to find that the resulting rates would not in general exceed maximum reasonable rates.

The contention that the finding of unjust discrimination was unsupported by a finding that the increased intrastate rates would yield increased revenue was found without merit.

The court observed that the commission had stated that it could not make a "positive finding" with respect to the revenue outcome, but pointed out that such a finding required "a prediction involving, especially since

<sup>11</sup> 290 U. S. 70, 78 L. ed. 181.

<sup>12</sup> (1932) 2 F. Supp. 545, P.U.R.1933C, 331.

<sup>10</sup> 186 Inters. Com. Rep. 615, 667.



**Q**UOTE "THE willingness of the Supreme Court to uphold the Interstate Commerce Commission in its exercise of far-reaching control over intrastate commerce has its implications not only in the field of railway regulation but in other fields as well."



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1930, many elements of uncertainty." A reading of the report as a whole, concluded the court, indicated that the commission had found that the probability of increased revenue was sufficiently great to warrant the exercise of its authority. The "probability" was evinced largely from a review of the estimates offered by the railroads as regards revenue gains and the assertions of railroad traffic men that these gains would accrue despite possible losses of traffic. This evidence was not considered critically, and the evidence of shippers was not considered at all.

FROM the standpoint of the principles of judicial review the attitude of the court toward the order of the commission may be commendable, for the commission is the fact-finding body and its expert conclusions from evidence should not be set aside lightly. But when the commission is unable to make the positive finding necessary to the exercise of its authority and probabilities are adduced from such tenuous evidence as the above, it is doubtful whether the commission should be permitted to assert control over intrastate commerce.

Unless clear and unmistakable findings are made it would appear to be inconsistent with the "principle that whenever the Federal power is exerted within what would otherwise be the domain of state power, the justification of the exercise of the Federal power must clearly appear."

It is not to be inferred from this discussion that the vesting of power with the Interstate Commerce Commission to control intrastate rates which actually discriminate against

interstate shippers or interstate commerce generally is an improper or unwise delegation of authority. The maintenance of unduly low intrastate rates for the purpose of favoring intrastate trade and industry is not economically justifiable, for it tends to obstruct the flow of trade in its most advantageous channels and reacts unfavorably upon the financial status of the carriers. The commission, acting under its authority, has been able to eliminate innumerable objectionable rate relationships during the last twenty years.

THE point to be emphasized, however, is that rate uniformity as between intrastate and interstate commerce is desirable only in so far as the rates established are economically proper and like transportation conditions obtain in the two fields.

If emergency decisions result in rates which are not clearly beneficial to the railroads from a revenue standpoint or to the business community, the public interest is not being served by extending them to intrastate commerce in the face of opposition from shippers and local regulatory bodies. In such circumstances it is the general adjustment of rates which should be carefully reconsidered and modified to meet peculiar conditions. Of course, there is always the danger that broad concessions will undermine the existing authority, but this is reduced to a minimum where the basic reasons are clearly and sharply drawn.

The willingness of the Supreme Court to uphold the Interstate Commerce Commission in its exercise of far-reaching control over intrastate commerce has its implications not

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only in the field of railway regulation but in other fields as well.

If Congress enacts legislation regulating interstate transportation by motor carrier or interstate transmission of electric power, there can be little doubt that conflicts between the state and Federal administrative authorities will arise.

**M**ANY enterprises in these industries operate in intrastate commerce exclusively, hence the Federal regulations will not impinge upon their activities. But in those instances where enterprises are engaged both in interstate and intrastate business,

there will be ample opportunity for the impact of Federal and state statutes and administrative orders. Divergencies in policies and practices with respect to the level and relationship of rates, permits to operate, abandonments, security issuance, and accounting will afford a fertile field for controversy and conflict.

It is conceivable, however, that coöperative action between the state and Federal agencies will in time result in ironing out the points of difference and minimize the necessity for an extreme assertion of control over intrastate affairs by the Federal authorities.



### Thumb-nail Essay on the Major and the Minor Premise

It is sometimes said by some of our political leaders that hydroelectric power should be developed by the government because this power belongs to the people and should be developed for the benefit of the people.

The technique of attracting popular support to any political project is always interesting. The argument is usually very simple. It runs like this:

*Major Premise:* Any project which, if carried out, would be for the benefit of the people should be supported.

*Minor Premise:* This project would be for the benefit of the people.

*Conclusion:* Therefore, it follows that the project should be supported.

The usual procedure would be to assume the truth of the major premise; that is to say that anything that would benefit the people should be supported—which is a truth that would be universally accepted without argument—and then to endeavor to prove the soundness of the minor premise; that is to say that the particular project would benefit

the people—which might well be questioned.

The best political technique, however, seems to be just the reverse. It consists in assuming the truth of the proposition that the particular project advocated would benefit the people (and that anything else is or would be detrimental) and in attempting to prove the truth of the proposition that anything for the benefit of the people should be supported. Having debated the proposition which nobody disputes and assumed the truth of the debatable one, the conclusion in favor of the project is expected to follow.

\* \*

There is an obvious advantage in this technique. It is often very hard to establish to the satisfaction of others the truth of any debatable question; but it is easy to convince the people of the truth of something which nobody questions. There has been no New Deal for our political leaders so far as this technique is concerned.

And this technique, by the way, is so well adapted to its purpose that its use is not confined to our political leaders.

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## Remarkable Remarks

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*"There never was in the world two opinions alike."*

—MONTAIGNE

HARRY L. HOPKINS  
*Federal Relief Administrator.*

"The people of this country don't know what it is to be taxed."

HAROLD L. ICKES  
*Public Works Administrator.*

"Even an emergency does not justify uneconomic or wasteful public works construction."

HENRY FORD

"Every time you raise the price of goods artificially you are putting an obstacle in the way of recovery."

NEIL CAROTHERS  
*Professor of Economics, Lehigh University.*

"... about half of the measures of the new deal were initiated before the present administration took office."

HENRY A. WHEELER  
*President, Railway Business Association.*

"... neither transportation or any other economic service can operate successfully half government and half privately owned."

DONALD R. RICHBERG  
*Executive Director, National Emergency Council.*

"The chatter of ignorant people who think that we cannot control the operation of natural laws is the greatest nonsense which afflicts our generation."

WENDELL L. WILLKIE  
*President, The Commonwealth & Southern Corporation.*

"Destruction of the value of utility securities, which would be the inevitable consequence of governmental competition, would jeopardize the financial stability of the nation."

MAGNUS JOHNSON  
*U. S. Representative from Minnesota.*

"Every municipally owned plant is a record of achievement of public ownership, and I know that the time will soon be here when the people will insist that the operation and use of power be placed directly in their hands."

CHARLES V. TRUAX  
*U. S. Representative from Ohio.*

"These (communications) public utilities are the only ones I know of, outside of the gas monopoly and the Power Trust, that all during this depression have not only refused to lower their rates, but have raised them, doubled, and trebled them."



## Motor Busses and Trucks— Long, Short, Heavy, and Light

Unsatisfactory result of wide variation in the restrictions imposed on highway carriers in adjacent and neighboring states. Can the states solve the problem or must the Federal government do the regulating in the interest of uniformity?

By HUBERT R. GALLAGHER

A BATTLE raging on forty-eight fronts would be extraordinary, even in an age which has witnessed the greatest of World Wars; yet in every state, and before every legislature, representatives of the railroads and of bus and truck interests are battling over regulations governing the sizes and weights of motor vehicles. The contesting forces are not fighting for king or country, for territory or for democracy, but for pounds and inches. And some authorities go so far as to believe that the fate of the railroads and the future development of motor transportation depend on the outcome.

Every state legislature has authority under the police power to restrict the sizes and weights of motor vehicles using the public highways. Not only may these regulations be established in behalf of the safety and con-

venience of the public using the highways, but more recently, the courts have held that such restrictions may be imposed in the interest of highway conservation. The Supreme Court upheld this power in the case of *Sproles v. Binford*.<sup>1</sup> Mr. Chief Justice Hughes, in delivering the opinion of the United States Supreme Court in that case, pointed out:

It cannot be said that the state is powerless to protect its highways from being subjected to excessive burdens when other means of transportation are available. The use of highways for truck transportation has its manifest convenience, but we perceive no constitutional ground for denying to the state the right to foster a fair distribution of traffic to the end that all necessary facilities should be maintained and that the public should not be inconvenienced by inordinate uses of its highways for purposes of gain.

THE motor vehicle restrictions thus imposed differ in every state.

<sup>1</sup> 286 U. S. 374, P.U.R.1932E, 157.

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Length limitations for single vehicles vary from 26½ feet to 60 feet, and for combination vehicles from 40 feet to 85 feet. Height limitations range from 11½ feet to 14½ feet. Widths are fairly uniform throughout the states—96 inches being the accepted standard. The widest variations exist in the regulations governing the weight of motor vehicles. One summary of state laws classifies weight restrictions under twelve headings based on design. The restrictions listed ran the gamut from the "4-wheel single unit" to the multi-wheeled truck-train described as the "6-wheel tractor—4-wheel semi-trailer—6-wheel trailer." The gross weights permitted for these units vary from 16,000 pounds for one unit to 135,000 pounds for the long vehicle train, although it should be mentioned that only one state permits a truck-train of such weight, and that these larger units are barred from the highways of many states.

In four states<sup>2</sup> weight restrictions are based on "payload capacity." These regulations vary from 7,000 pounds for the smaller units to 30,000 pounds for combination trains. In thirty-three states axle weight limitations are in effect, with the loads allowed per single axle varying from 10,000 pounds to 22,400 pounds.

**T**HIS brief survey points to the utter lack of uniformity in the provisions of state laws regulating the weight of motor vehicles. So chaotic is the situation that in no two neighboring states are the regulations identical. It is evident that the laws were enacted without regard to national

uniformity, and subsequent amendments have not improved the situation. Thus it is only natural that "border-line" carrier wars break out between the states and frequently disrupt interstate commerce.

Few have questioned the power of state legislatures to regulate the dimensions of busses and trucks. Even the courts have been reluctant to supplement their judgment for that of the legislatures, unless it is clear that the limitations are obviously unreasonable and inequitable in character. However, that does not mean that there has not been long and loud protest against the restrictions imposed by the state lawmakers.

Motor transport interests claim that the restrictions are unreasonable, inflexible, and destructive. On the other hand, the railroads think the regulations too lax, ineffectual, and generally inimical to themselves and the public.

**B**OTH parties to the dispute appeal to the public—a public with a dual personality. The "public" dear to the hearts of the railroads is made up of taxpayers (including, of course, the railroads) who protest against highway costs which seem excessive—if the taxpayers listen to the argument that wider, thicker, and therefore more expensive highways are needed to accommodate unrestricted motor vehicle traffic.

The "public" dear to the bus and truck world is composed of shippers who object to high railroad freight charges, of persons absolutely dependent upon motor vehicle transportation, and finally, of consumers who would protest vehemently against any in-

<sup>2</sup> Georgia, Louisiana, Mississippi, and Texas.

## PUBLIC UTILITIES FORTNIGHTLY

crease in the prices of milk, fruit, and vegetables which would probably be mandatory if it were necessary to transport these products over short distances at prevailing rail freight rates.

A number of reasons for conflict are at once apparent to the informed observer who would be both impartial and realistic. The motor vehicle interests valiantly fight regulations which tend to increase passenger-mile and ton-mile costs. The long truck-train is obviously more economical for them to operate, and therefore more profitable. Passenger busses carrying thirty to thirty-three passengers bring more revenue than those carrying thirteen passengers or less.

THEY argue that a lack of uniformity in the limitations governing motor vehicle sizes and weights "breeds confusion, interferes with the free flow of interstate commerce, and invites evasion of the law." In addition, they assert, that in the absence of standards for vehicles highway engineers are without definite guides for determining highway construction, and also that the builders of motor vehicles never know what type of bus or truck will comply with the different regulations in the various states. All of these parties are at their wits' ends because, as William

J. Cunningham, professor of transportation at Harvard, has so succinctly stated:

The nation has not yet adopted a definite policy as to whether highways are to be designed for the vehicle or the vehicle designed for the highways.<sup>3</sup>

Their creed is that motor transportation for relatively short distances offers such economic advantages as flexibility, speed, and convenience that it should be encouraged, and that in return the motor carriers should be expected to pay a reasonable tax for the use of the public highways.

To encourage the adoption of uniform standards by the state legislatures, a number of organizations have promulgated codes governing gross weight, dimensions, and speeds for motor vehicles operating on the highways. The best known of these codes is that recommended by the American Association of State Highway Officials.

THIS code which has been developed after many years of research by a number of state highway departments and the United States Bureau of Public Roads prescribes the following dimensions:

<sup>3</sup> See *Proceedings of the Interstate Bus and Truck Conference*, Harrisburg, Pennsylvania, October 20, 21, 1933, statement by William J. Cunningham, Professor of Transportation, Harvard University, p. 12.



"THE motor vehicle restrictions . . . differ in every state. Length limitations for single vehicles vary from 26.5 feet to 60 feet, and for combination vehicles from 40 feet to 85 feet. Height limitations range from 11.5 feet to 14.5 feet. Widths are fairly uniform throughout the states—96 inches being the accepted standard."



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Width	-	-	-	-	96 inches
Height	-	-	-	-	12½ feet
Length per unit	-	-	-	-	35 feet
Length-combination	-	-	-	-	45 feet
Weight—					
Axle load	-	-	-	-	16,000 pounds
Gross weight	-	-	-	-	$W=C(L+40)$ <sup>4</sup>

The American Association of State Highway Officials believes the adoption of such a code by the state legislatures a "fundamental necessity" for the following reasons:

1. To establish one of the fundamental prerequisites of highway design.
2. To promote efficiency in the interstate operation of the motor vehicle.
3. To secure safety in operation.
4. To remove from the highways undesirable equipment and operations.
5. To stabilize, on a definite basis, the many relationships between the highway and the motor vehicle.

Although this uniform code has been endorsed by a great many national organizations, including the American Automobile Association, the National Highway Users' Conference, the United States Bureau of Public Roads, and the War Department, it has also met with real opposition. In a recent referendum vote of the Chamber of Commerce of the United States on questions pertaining to motor and rail transportation, a majority of the members declined to approve the code.

**A**FTER three months of intensive study and discussion of the rail and highway transportation problem by members of the Joint Committee

<sup>4</sup>Subject to the limitation imposed by the recommended axle load no vehicle shall be operated whose total gross weight, with load, exceeds that given by the formula  $W=C(L+40)$  where  $W$ = total gross weight, with load, in pounds;  $C$ = coefficient to be determined by each state; and  $L$  the distance between the first and last axles of a vehicle or combination of vehicles in feet. A value of 700 is recommended for " $C$ " as the lowest which should be imposed. See State Government, Vol. 6, No. 10, October, 1933, p. 17.

of Railroad Executives and Highway Users, diverse opinions were expressed concerning the recommendations of the American Association of State Highway Officials. The railroad group filed the following dissent:

Believing that weights and lengths are matters that should be left to the proper state regulatory authority, as they may find to be in the public interest, the railroads are unable to make any recommendations for uniform application.<sup>5</sup>

**T**HE railroads, fighting for their financial lives and therefore for every ounce of freight and for every passenger, find their revenues curtailed through the use of large busses and trucks. In opposing national standards that might increase the size of motor carriers they argue that the demand for reciprocal and uniform regulations does not come from the operators of passenger cars, delivery trucks, and other small carriers having gross weights of less than five tons. Harassed taxpayers, according to the heavily taxed railroads, should not be asked to subsidize highway transportation to the extent of spending millions.

Spokesmen for the railroads also point out that highway conditions differ in each state. For instance, New Hampshire has only a few hundred miles of standard highway capable of bearing heavily loaded vehicles, and the representatives of this state cannot afford to allow them to operate where the highways are not constructed to bear such loads. It is argued that a classification of the highways of the smaller states might solve this problem. However,

<sup>5</sup>See Recommendations of the Joint Committee of Railroad and Highway Users. Section 77. January 30, 1933.



### Uniformity of Regulation Sought by States

**"I**N the absence of Federal regulation shippers, manufacturers, and motor vehicle operators have taken steps to bring about national uniformity in the limitations on sizes and weights imposed by the state legislatures. Many lawmakers and state officials not wishing to block interstate commerce and finding 'borderline' motor vehicle wars between states onerous have also taken part in this movement toward uniformity."

it is obvious that many of the secondary highways in New England would groan under the heavy and profitable freight trucks from New York where a maximum axle weight of 22,400 pounds is permitted.

**S**INCE the railroads object to all efforts to bring uniformity into the limitations governing the size and weights of vehicles, it is somewhat surprising to find them advocating Federal regulation of the bus and truck traffic by the Interstate Commerce Commission or a similar agency. Federal regulation of motor transportation would, no doubt, eventually mean the standardization of sizes and weights for specific regions or for the entire nation. Uniformity of this nature would, of course, be welcomed by the motor vehicle interests, harassed as they are by varying restrictions among the different states, but it would also mean stringent regulation of rates, possibly even the

imposition of railroad tariffs, which would, of course, be inimical to the interests of most of the carriers. However, the railroads would gladly welcome the imposition of such a handicap upon busses and trucks in the race for passenger and freight revenues.

In the absence of Federal regulation shippers, manufacturers, and motor vehicle operators have taken steps to bring about national uniformity in the limitations on sizes and weights imposed by the state legislatures. Many lawmakers and state officials not wishing to block interstate commerce and finding "borderline" motor vehicle wars between states onerous have also taken part in this movement toward uniformity.

**R**ECENTLY, a desire for action on the part of a state legislature resulted in the general assembly of Pennsylvania calling a conference of legislators and state officials from

## PUBLIC UTILITIES FORTNIGHTLY

seventeen northeastern states to meet in Harrisburg for the purpose of framing reciprocal and uniform legislation and regulations relating to the size, weights, heights, and lengths of motor vehicles for the transportation of passengers and freight which should be permitted in the interests of the public safety and to make recommendations to the legislatures of said several states for the adoption of such legislation at a uniform date.<sup>6</sup>

In response to this call eighty-seven legislators and state officials assembled in the state capitol at Harrisburg and there listened to a presentation of arguments for and against uniform size and weight restrictions by representatives of the various motor vehicle interests, shippers, railroads, and experts from the United States Bureau of Public Roads.

**A**FTER considerable deliberation the delegates at the final session of the conference adopted three resolutions. The following paragraphs of these resolutions are especially worth quoting:

RESOLVED, that the interests of taxpayers and private noncommercial motorists must be recognized as paramount in determining the dimensions and weight of motor vehicles and the length of permissible combinations thereof;

That the public interest requires the adoption of specific maximum gross weights for each class of highway vehicles consistent with the preservation and safe use of the highways for private noncommercial motorists and consistent with a fair distribution of the expense of construction and maintenance of such highways;

RESOLVED, that it is the sense of this conference that there is a tendency toward a reduction of lengths and weights rather than an increase.

Whereas, it appears that sentiment and research have not been sufficiently developed to enable this conference to make

recommendations governing the dimensions of trucks and busses throughout the area covered by this conference:

Therefore, Be it recommended to the various state legislatures that arrangements be made for properly constituted and authorized delegates to be appointed to conferences of smaller groups of states under the direction of the American Legislators' Association.<sup>7</sup>

This conference was looked upon by some as a distinct victory for the railroads, mainly because all efforts to adopt a uniform code were thwarted. Others viewed the conference as a definite step in the direction of regional, and eventually national, uniformity, through agreements by smaller groups of states.

**I**T was apparent to all that here was a subject requiring further research and deliberation for solution. The problem seems fraught with more than the usual conflicts between states. A few observers believed that collective state action was visionary, and that the ultimate solution of the baffling problem of uniform regulation of sizes and weights of busses and trucks would come through Federal control.

The far West has also felt the lack of a complete and unified system of motor vehicle regulation. A desire for regional uniformity in that section of the country led to the adoption of resolutions by the legislatures of Utah and California calling a motor vehicle conference of the eleven western states which met in Salt Lake City, June 25th-27th. As in the case of the Harrisburg conference, arrangements for the Western Bus and Truck conference were handled by

<sup>6</sup> State Government, Vol. 6, No. 8, August, 1933. (Inside front cover.)

<sup>7</sup> See *Proceedings of the Interstate Bus and Truck Conference*, Harrisburg, Pennsylvania, October 20, 21, 1933, pp. 62, 63.

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Henry W. Toll, executive director of the American Legislators' Association.

**T**HIS second attempt to secure uniform motor vehicle regulations was highly successful. Resolutions adopted by the conference, in addition to the one recommending a standard for weights and dimensions included proposals for uniform licensing and registration; for full reciprocity between the states; for the establishment of checking stations at state lines similar to the Kansas Ports of Entry; for the construction of a \$500,000 experimental and test road project by the Federal government in cooperation with the western states; and finally, for the creation of a permanent organization consisting of two legislators and one administrator from each of the eleven western states to perpetuate the work of the conference.

The resolution by the Committee on Weights and Dimensions was adopted after a minority report submitted by the Arizona and New Mexico delegations objecting to the fixing of weights was rejected. During the debate on the majority resolution the delegates from Arizona and New Mexico urged that the conference go on record to the effect that the solution of the weight problem be left to the individual states.

**T**HE majority report, adopted without change, provided for a maximum-overall length of 35 feet for single vehicles; for not less than 45 feet nor more than 60 feet overall for a combination of vehicles; for a height restriction of  $12\frac{1}{2}$  feet, and for a width of 8 feet.

The resolution fixed the following wheel and axle load limits:

(a). The gross weight of any vehicle and load upon any wheel shall not exceed the following:

(1). When the wheel is equipped with high pressure pneumatic, solid rubber, or cushion tire, 8,000 lbs.

(2). When the wheel is equipped with a low pressure pneumatic tire, 9,000 lbs.

(b). The gross weight of any vehicle and load upon any one axle shall not exceed the following:

(1). When the wheels attached to said axle are equipped with high pressure pneumatic, solid rubber or cushion tires, 16,000 lbs.

(2). When the wheels attached to said axle are equipped with low pressure pneumatic tires, 18,000 lbs.

(c). The gross load on 2-axle vehicles shall be limited to 24,000 lbs.

(d). The gross load on 3-axle vehicles shall be limited to 34,000 lbs.

(e). The loads on combinations of vehicles shall be governed by the formula  $W=C \times (L+40)$ ; where W equals the gross load and C may vary between 600 and 800.

It is apparent that the above standards differ in but few particulars from the regulations set forth in the uniform code adopted by the American Association of State Highway Officials.



**Q** "FEW have questioned the power of state legislatures to regulate the dimensions of busses and trucks. Even the courts have been reluctant to supplement their judgment for that of the legislatures, unless it is clear that the limitations are obviously unreasonable and inequitable in character."

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ONE factor contributing to the success of the Salt Lake conference was that the delegates, with few exceptions, were not subjected to the blandishments of the special pleaders who were so much in evidence at Harrisburg. Can it be that the so-called "predatory interests" are losing their grip? Or possibly public interest in the West does not need a champion? In any event both sides relaxed their vigilance for a moment and much good was accomplished, although of course it is necessary to point out that the recommendations of the conference must be submitted to the respective state legislatures for consideration and adoption.

Possibly this lack of interest on the part of the pressure groups may be only a lull before the legislative storm of 1935 when all the legislatures in the West will be in session. Thus in January the battle lines may once again be drawn and great efforts made by both railroad and bus and truck interests to overthrow the re-

sults of the Western Bus & Truck conference.

IN any event one thing is apparent and that is it is evident that the railroads are cast in a new rôle, no doubt strange to them, as defenders of the public's interest. Their spirit and self-sacrifice often prompt cynics with motor carrier leanings to ask whether they have read that important paragraph in the report made by the National Transportation Committee, to wit:

One thing is certain. Automotive transportation is an advance in the march of progress. It is here to stay. We cannot invent restrictions for the benefit of railroads. We can only apply such regulations and assess such taxes as would be necessary if there were no railroads, and let the effect be what it may.

The realist understands that after all both sides are interested in passenger and ton-mile costs first, and the public second. However, the railroads have come a long way since the day the irascible Commodore Vanderbilt gave vent to his feelings.



### Progress?

OVER on the lake front Chicago has been celebrating A Century of Progress with a great expanse of modern wonders, but in the outlying districts of the city linger scenes reminiscent of the nineties.

Only a few miles away from the electrical displays at the fair lamp-lighters still go about before dusk to light gasoline street lamps. The city maintains 575 gasoline lamps and 4,897 gas lamps.

They are maintained not because of a desire to cling to the Nineteenth Century methods, but because of scanty funds.

Each of the gas lamps has a pilot light, and all of them are controlled by an automatic time switch. But for the 575 gasoline lamps a score of men travel about before dark with a ladder and a blowtorch to light them. Some make their nightly trip by foot, others by automobile.

—THE EVENING NEWS,  
Harrisburg, Pa.

# What Others Think

## The "Depression-proof" Utilities

**P**UBLIC utility operators should be pleased, although many of them will doubtless be surprised, to learn that "utilities are practically the only important industries which have not been seriously affected by the depression." Authority for this statement is Dr. John Bauer, widely known utility rate specialist and director of the American Public Utilities Bureau. He concedes that they have lost business—some, quite heavily, but adds that they have sustained more of their predepression volume of business and level of revenues while adjusting operating expenses much more advantageously and yielding comparatively less income through rate reductions. Says Dr. Bauer:

Compared with other industries, the utilities have stood practically by themselves against the ravages of the depression. First, they have furnished fundamental necessities as to which there could be no extensive contraction in use. Second, they have occupied a monopoly position and have not

been pushed to fight for business to meet competition. Third, though they have been generally subjected to state commission control, this has been largely ineffectual. Fourth, while they have served a public function, they have not been subjected to the direct public insistence upon rock-bottom economy and reduction in cost to taxpayers and consumers as have municipalities in dealing with similar services essential to community life.

**B**ELOW is an interesting table upon which Dr. Bauer bases his conclusions.

It should be noted that the apparent increase in revenue per kilowatt hour of electricity resulted from the loss of industrial or very low rate class of business from 1929 to 1933, while there was an increase in the domestic or higher rate class of business (which increased 22.3 per cent in volume of kilowatt hours sold from 1929 to 1933). Nevertheless, Dr. Bauer finds that there is even an increase in net operating income over the two comparative periods



EFFECT OF THE DEPRESSION ON OPERATING REVENUES AND SERVICES OF ELECTRIC, GAS, AND TRANSPORTATION UTILITIES

	1933	1929	Per cent increase, or (D) decrease
<i>Electricity</i>			
Kilowatt hours sold .....	66,333,000,000	75,294,000,000	D 11.9
Operating revenues .....	\$1,917,800,000	\$2,106,900,000	D 9.0
Revenue per kilowatt hour .....	2.89 cents	2.80 cents	3.2
<i>Gas—Manufactured</i>			
M cubic feet sold .....	354,539,300	401,154,000	D 11.6
Operating revenues .....	\$379,841,400	\$444,155,000	D 14.5
Revenue per M cu. ft. ....	\$1.06	\$1.11	D 4.5
<i>Gas—Natural</i>			
M cubic feet sold .....	848,652,300	580,448,561	46.3
Operating revenues .....	\$302,289,800	\$264,296,075	14.4
Revenue per M cu. ft. ....	\$.36	\$.46	D 19.5
<i>Transportation</i>			
Street railway passengers .....	9,409,500,000	14,435,000,000	D 34.8
Street railway operating revenues .....	\$570,000,000	\$907,001,000	D 37.2
Revenue per passenger .....	6.06 cents	6.28 cents	D 3.5
Bus passengers .....	1,672,015,000	1,774,000,000	D 5.8
Bus operating revenues .....	\$283,199,000	\$322,000,000	D 12.1
Revenue per passenger .....	16.92 cents	18.15 cents	D 6.8



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as shown by the following table for the electric industry alone:

	1929	1933
Kilowatt hours sold . . .	1,646,998,938	1,620,485,000
Number of consumers . . .	849,996	846,132
Operating revenues . . .	\$64,663,602	\$61,958,753
Operating expenses . . .	30,535,080	24,136,694
Taxes . . . . .	8,113,814	10,559,147
Uncollectible bills . . . .	166,788	447,366
Total revenue deductions . . . . .	\$38,815,682	\$35,143,207
Net operating income . .	25,847,920	27,508,822

**D**R. Bauer does find that there exists a definite threat to the future security of public utilities as an investment medium in the form of renewed public ownership sentiment. This, however, he feels is only in the incipient stage, generally speaking, and will take time to undermine seriously the major position of private enterprise. He concluded:

The depression has reemphasized the public character of the utilities as well as the grave difficulties of controlling them when privately organized. Nevertheless, while one may be fully convinced that in the long run public ownership furnishes by far the best policy, the shift from private organization will require considerable time because of public inertia and the entrenched position of the companies. The depression, therefore, will also result in renewed stock-taking of regulation and in reconstituting the regulatory structure so as to make regulation more responsive and effective in the public interest. A comprehensive legislative inquiry is in progress in New York, and practically everywhere movements are under way to the reshaping of utility organization and control to positive public objectives.

**B**E that as it may, Jerome Preston, writing in *Barron's*, the national financial weekly, is not so cheerful when he surveys the future of utilities as a private investment. He states:

The unfavorable factors affecting utility companies are well known and may be summarized as: (1) Increased costs due to NRA and to any future inflation; (2) increased taxation and regulation; (3) government and municipal competition; (4) forcibly lowered rates, and, finally, and embracing the other four, (5) the general belief that the public and governing bodies, local and national, are in favor of "soaking the utilities" by one means or another.

The first point is unqualifiedly unfavorable, but without minimizing the seriousness of higher costs it should be kept in mind that

coal costs consume only 7 per cent of the gross of the industry, wages 15½ per cent, and maintenance 5 per cent. One detailed survey estimates the following changes in costs for the next 12-month period compared to the last, including the effect of recent increases not yet experienced for a full year: Fuel prices up 10 per cent, payrolls up 6 per cent, construction (maintenance) costs up 6 per cent. These increases total less than 2 per cent of present gross. Currency inflation would have an adverse effect as costs would increase far ahead of any possible rate revisions. Over the long pull, however, the earning power of utilities should be protected, as the principle of reproduction cost as a basis for fair return has since 1898 been consistently recognized as a factor in rate cases by the United States Supreme Court and recent court and commission cases "have tended to give the reproduction method an increasing if not dominant weight."

Increased taxation is decidedly bearish, but it is a burden already reflected in earnings and prices. Taxes of all kinds are currently consuming 13.8 per cent of gross, compared with 10.9 per cent in 1932, an increase of about 25 per cent in dollars. There has been in effect for over a year a Federal tax of 3 per cent on electricity sold for domestic and commercial uses, and many cities and states have imposed sales taxes on electricity and gas, or so-called occupational taxes, all of which has had an adverse effect upon earnings. The tendency to levy temporary special taxes on utilities is spreading and is of course unfavorable to those companies not already affected. Yet the market is particularly severe in its appraisal of the earnings of companies whose operating expenses already include large items of this nature, apparently on the theory that such taxation results from spite and will be pushed to the limit for that reason. It seems much more reasonable, however, to believe that utilities have been taxed heavily in the emergency chiefly because they were obviously prosperous and could stand it. In weighing the effect of taxation on earnings it should be remembered that taxes have uniformly been held by public utility commissions and courts to be allowable expenses in determining a fair return. Said the department of public works of the state of Washington in a recent decision (Feb. 14, 1934): "Under effective regulation any tax imposed upon a utility is a tax imposed upon its customers."

**M**R. Howard Florance, analyzing the utilities as an investment medium in the *Review of Reviews* gives a record of earnings for leading utility systems that does not quite tally with

# PUBLIC UTILITIES FORTNIGHTLY

## NET EARNINGS (Net available for common)

	TOTAL (000,000)					
	Average		Yearly		First 6 months	
	1928-1933	1931	1932	1933	1933	1934
Brooklyn Union Gas .....	5.1	5.7	5.0	4.6	2.5	1.8
Columbia Gas & Electric .....	17.3	16.5	11.1	5.9	4.6	4.2
Consolidated Gas .....	50.2	56.7	46.8	38.0	26.2	17.7
Detroit Edison .....	10.1	11.4	6.6	6.1	5.9*	7.3*
Pacific Gas & Electric .....	12.3	17.0	13.1	9.3	5.4	4.2
Peoples Gas .....	5.7	7.6	4.2	2.0	1.7	1.0
Public Service Corp., N. J. ....	19.4	21.0	19.0	17.9	8.6	8.7
So. California Edison .....	7.1	7.8	6.5	4.0	1.6	1.0
United Gas Improvement .....	30.9	34.0	31.6	28.7	14.9	14.6

	PER SHARE					
	Average		Yearly		First 6 months	
	1928-1933	1931	1932	1933	1933	1934
Brooklyn Union Gas .....	7.24	7.64	6.79	6.18	3.37	2.76
Columbia Gas & Electric .....	1.56	1.42	0.96	0.51	0.40	0.37
Consolidated Gas .....	4.44	4.94	4.08	3.31	2.26	1.52
Detroit Edison .....	8.53	8.98	5.21	4.83	4.61*	5.73*
Pacific Gas & Electric .....	2.49	2.72	2.09	1.61	0.87	0.67
Peoples Gas .....	9.15	10.96	6.20	2.90	2.49	1.55
Public Service Corp., N. J. ....	3.61	3.82	3.46	3.26	1.57	1.59
So. California Edison .....	2.46	2.36	2.06	1.33	0.46	0.32
United Gas Improvement .....	1.39	1.46	1.36	1.23	0.64	0.63

All these nine companies show lower net earnings in 1933 than in 1932; and all but one are still lower in the first half year 1934. This is worthy of special note because the period had been one of general business recovery. Taking 1933, the last full year, and comparing it with a 5-year average, the nearest approach to earnings stability are the records of United Gas Improvement, Public Service, N. J., and Brooklyn Union Gas—each exceeding 90 per cent of its average.

\* Detroit Edison current earnings are for twelve months ended July 31st.



Dr. Bauer's impression that the depression has not hit the utilities "seriously" in the pocketbook. Whatever may be the reasons, the above table shows an unmistakable drop in net earnings during every year from 1931 to 1934:

Mr. Florance comments on these statistics as follows:

A glance at our table of net earnings shows that every one of our nine utilities earned less in 1933 than in 1932, and all but one of them earned less in the first half of 1934 than in the same period of 1933. This was not true of the motor industry, nor of the railroads, the two groups that have been under examination in preceding articles. It is significant when one remembers that business recovery has been under way during this past year and a half. Indeed, kilowatt hours sold to consumers last year were 3 per cent above 1932 and in the first half of 1934 were 13 per cent above the first half of 1933. More business, less profit.

The gas industry in similar fashion is proud of the fact that it gained 360,000 domestic customers in the first half of this year, and that its sales of gas ranges were 42 per cent in excess of sales in the first half of 1933.

We have chosen to emphasize the tax burden and prospective government competition in this summary of current investment aspects of the gas and electric light and power industries. They face another problem in the rising cost of labor and materials under NRA. Coal in vast quantities enters into the production of both manufactured gas and electric energy; and the rise in fuel costs is too well known to dwell upon here.

**A** HARD-HEADED outfit is *Standard Trade and Securities*. They are not concerned with arguing a case, or pushing any cause for or against private utilities. They are concerned only with giving practical advice to security investors. With this disinterested back-

## PUBLIC UTILITIES FORTNIGHTLY

ground, it is significant to note the following general comments about utilities securities contained in that publication last July:

The future trend of utility earnings, particularly in the fall months, should be moderately in favor of higher prices for utility equities. Changes in sentiment with respect to such external factors as rates, taxes, competition, and regulation, however, probably will continue to govern price movements, at least partially, for the present. Since there are indications that the industry is proceeding toward an equitable adjustment of some of these difficulties, it is not too early to anticipate their further removal by accumulating common stock of the more conservatively managed operating companies. Certain operating company preferred issues are attractive for income purposes at current prices. *A neutral attitude is maintained with respect to the greater number of stocks, however, pending evidence of an upturn in earning power and the removal of extraneous difficulties.* In view of the possibility that holding company earnings may improve sharply with further business improvement, liquidation of issues in this category should be deferred; the majority of these stocks are too speculative for acquisition at this time.

Again, on September 26th, *Standard*

*Trade and Securities* had this to say about telephone securities:

The speculative outlook of telephone equities is clouded by the obscure business situation and restricted by the uncertainties surrounding the initiation of Federal rule. Thus, even though somewhat higher operating revenues and a slight increase in profits are indicated for the full year, retention for income purposes of a relatively small aggregate investment in a few of the best dividend paying issues should be the limit of commitments at this time.

Perhaps the truth of the matter is that utility investors are more concerned with what may happen in the future than what has happened in the past.

F. X. W.

EFFECT OF DEPRESSION ON PUBLIC UTILITIES. By John Bauer. *Public Management*. October, 1934.

PROSPECTS FOR UTILITIES. By Jerome Preston. *Barron's*. October 8, 1934.

ANALYZING THE UTILITIES. By Howard Florence. *Review of Reviews*. October, 1934.

UTILITIES. *Standard Trade and Securities*. 345 Hudson Street, New York. July 18, 1934; September 26, 1934.

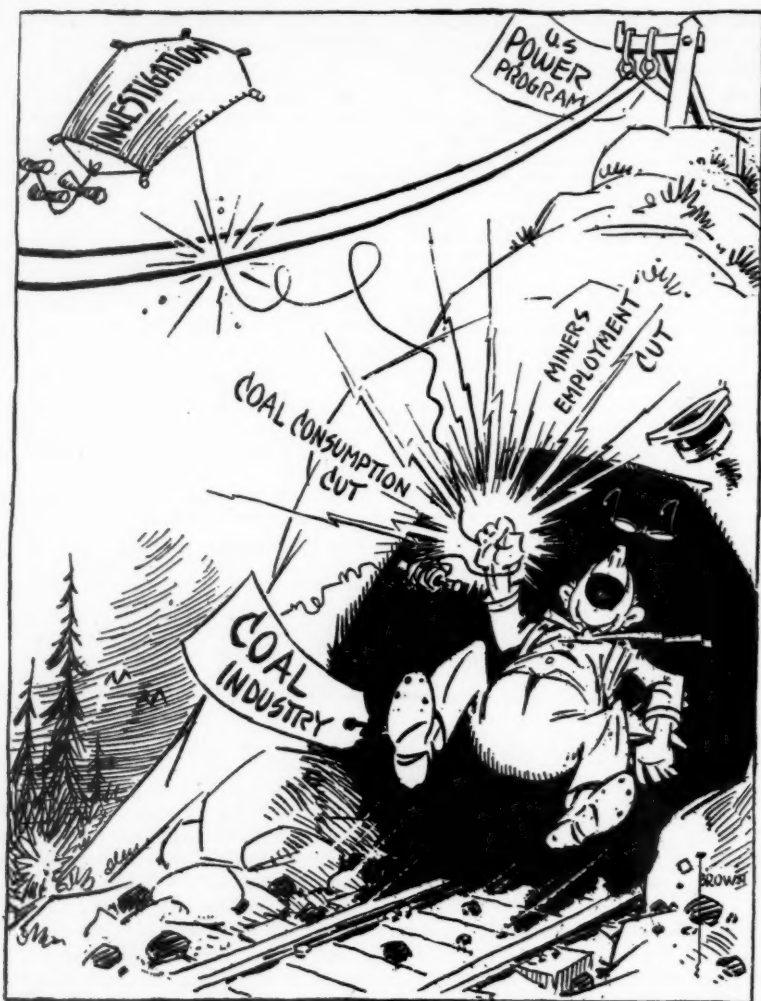
## A History of Government Failure in Business

GILBERT Chesterton, the English master of sparkling paradoxes, once suggested that a political "radical" in the accepted sense of that term might be just another name for a person who is ignorant of history. This may seem somewhat harsh if not actually snobbish, but it must be admitted that there are prevailing examples of short memories among many politicians who are proud to call themselves "ultra-liberal." One would think, for instance, that the voters of South Dakota would be so fed up with business operations by the state that no politician would dare ever again to suggest anything of the sort, and yet, at this writing, certain campaigning candidates for office in both Dakotas have spoken fa-

vorably of a number of socialistic schemes, and it is not recorded that they spoke to empty benches.

Dr. Warren M. Persons, former professor of economics of Harvard University, has written a book which Editor Raymond Moley's *Today* dismisses as "superficial and unimportant." It is a survey over a period of 150 years of various attempts in business by the Federal and state governments. Assuming a minimum of research and literary competence to which a background and professional record such as that of Dr. Persons is certainly entitled, this reviewer wondered just how a record of 150 years of history of such an important government policy could possibly be unimportant. This reviewer

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## MODERN BEN FRANKLIN

found the book interesting and significant.

**D**R. Persons' research fairly indicates that government ventures into business which were entered into as self-sustaining and self-liquidating projects have proven "inefficient and

tremendously costly" to the taxpayers. He gives specific examples of how taxpayers of an earlier generation found out to their sorrow that contrary to the promises of politicians they had to foot the bill for state turnpikes, canals, and banks. The inevitable result was a financial dilemma which forced the po-

## PUBLIC UTILITIES FORTNIGHTLY

litical management into imposing high taxes or adopting a more direct and drastic remedy—the repudiation of government securities. He points out how this expensive experience led many states to revolt and adopt amendments to their state Constitutions restricting the debt contracting power of their representatives. Eight Southern states took the more drastic alternative—repudiation.

The reader will recognize as familiar the invariable arguments of the proponents of some of these old ventures to the effect that the enterprise would be “self-liquidating.” There was, for example, the reclamation projects of the Federal government, inaugurated over thirty years ago, which were supposed to be self-supporting from a “revolving” fund accumulated from the sale of irrigation rights. But something slipped up and the fund did not revolve and the taxpayers are still continuing to pay the deficit. Not all the ventures were unsuccessful from the standpoint of feasibility. For instance, there was the amusing case of the camels which were bought by the War Department shortly before the Civil War, with the idea that they would furnish a better means of transportation in the desert country of the Southwest than the local mule. After importing from Africa about seventy of the animals, it was found that they were quickly acclima-

tized and thrived almost as well in the United States as they do in the Sahara. The only difficulty was that nobody could think of any thing for them to do. Advocates of the plan had forgotten or ignored the fact that we already had a large number of mules. In the end the lot was sold to various circuses, zoos, and museums.

**D**R. Persons reviews early attempts by the various state governments into such businesses as turnpikes, canals, railroads, and banking. He also reviews peace-time ventures of the Federal government, such as the construction of railroads in 1862, construction of the Alaska railroad in 1912, reclamation in 1902, Boulder dam, 1922, and agricultural loans, 1923. In dealing with the war-time business activities of the Federal government, Dr. Persons tells how difficult it is for a government to retire from a business once undertaken, such as the construction of ships, the operation of railroads and waterways. A review of various socialistic experiences of North and South Dakota and a summary of results of Federal and state ventures into business generally conclude the work.

—F. X. W.

GOVERNMENT EXPERIMENTATION IN BUSINESS.  
By Warren M. Persons. John Wiley & Sons, Inc. New York. 1934. Price, \$2.50. 268 pages.

## Three Critical Volumes on the Present State of the Union

**V**ERY often it is just as important to know why an author has written a book as it is to attempt to review the merit of its contents. There are so many books in the world already, that it must be presumed that when a sincere and intelligent person writes a book, he believes that there is a good and sufficient reason why such a book should be written. By “good and sufficient” reason, of course, is meant an

honest belief that the reading public or some portion of it will benefit by the views expressed—not merely a desire on the part of the author for royalties or for the sole and doubtful distinction of having written a book.

When a former president of the United States takes pen in hand and writes a book upon the state of our government, the reason why becomes of special importance. Is it an opening bid



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for a political come-back? Or is it an apology for his own term in office and an attempt to correct the "records" of history concerning himself? Or is it just political propaganda published during an off-year preëlection campaign of considerable importance? All these thoughts may occur to one about to open the first page of Herbert Hoover's recently published book, "The Challenge to Liberty."

**B**UT it is not necessary to read further than the introduction to realize that Herbert Hoover has no illusions that he is but an exiled leader awaiting the call of his unhappy people. The very courage with which this book is written impressed this reviewer as the work of a man who realizes that he is "through" politically. Nor is it a belated attempt of Mr. Hoover to put himself in "right" with posterity, for the book contains only a few passing references to Mr. Hoover's personal record. It is more an analysis of the present and a prophecy of the future. Nor can it be said that the work is just another document of partisan politics. Mr. Hoover's argument clearly shows that he is addressing thinking individuals—not typical campaign audiences. It is too cold blooded, too deliberative, to be classed as the rant of the demagogue on the hustings.

No—when one honestly attempts to figure out why Mr. Hoover wrote this book, the conclusion is inescapable that it is the work of an honest man pointing out what to him are the real dangers in the trend of our government. The danger comes, according to the author, from the possibility of regimentation, under governmental compulsion, of all the individualistic qualities that have made America a great nation. Mr. Hoover sees the danger in forsaking the safeguards for our personal liberties laid down in the Constitution. He clearly indicates that he believes in some reconstruction of the American system, but he insists that the right to private profit must be retained as a spur to private initiative. He believes that

profit must be more honestly redefined. He is opposed to business competition by the government with its citizens, such as the power development in the Tennessee valley. Mr. Hoover's style is sometimes too grave for sustained interest. Occasionally he recites a most commonplace principle with all the profundity of a new discovery. On the whole the work is thought provoking and is bound to make an unbiased reader pause to examine whether or not we do still possess all our constitutional rights after a year and a half of New Deal experiments.

**T**wo other recent books which criticize New Deal policies have attracted such wide attention that Professor Moley's *Today*, unofficial organ, apologist, or what not for the New Deal, gave feature article space to a routine review by Benjamin V. Cohen, who takes approximately 2,500 words and a photograph of textile mill strikers in order to assure us that both books are unimportant and a waste of time to read. These books are "Roosevelt versus Recovery" by Ralph Robey, and "It's Up to Us," by James P. Warburg.

Within the modest confines of Mr. Robey's volume may be found the outline of practically all the major theoretical criticisms of the present administration's policies. Mr. Robey argues on principle rather than specific incidents. He makes a fair job of ridiculing the inconsistencies of the administration's monetary policies. His denunciation of the NRA and the tactics of General Johnson is fairly well done, but he is at his best in the brief space taken to demonstrate that government spending is a false road back to recovery and that the subjugation of the Federal Reserve system by a Treasury bent on "writing up" the assets of the government in favor of its own books is an obstacle to the return of sound banking practice.

In the rôle of iconoclast, Mr. Robey is so unmercifully logical that his book stands out as perhaps the most trenchant criticism of the New Deal to date.



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He seems to realize this and essays the rôle of constructive analyst in only a few passages. When he does so, he is less convincing. He specifies the possible alternatives that faced President Roosevelt on March 4, 1933: (1) facism; (2) communism; (3) modified capitalism. He believes that the President chose none of these entirely, but has followed a straddling course which contained certain aspects of all three, while professing to follow the road of "enlightened capitalism." Mr. Robey believes that if national disaster is to be averted, we must return to "the tenets of liberal capitalism." The author is quite vague about all this and thereby leaves himself open to the rejoinder of the New Dealers that he has no definite program to offer instead.

MR. Warburg, who confines his work more or less to a criticism of the fiscal policies of the New Deal is strong in the very department where Mr. Robey appears weak. Mr. Warburg, himself a friend and trusted financial adviser in the early days of the administration, does not go into so much detail in refuting the errors of the New Deal. He contents himself with reciting for us the reasons why the Federal government's financial policies, plus its tendency toward planned economy, must inevitably end up with inflation and regimentation. This is not

exactly new but Mr. Warburg's approach seems novel and preëminently readable. His sketch of what planned economy has done for the individual citizen in Italy, Russia, and elsewhere, should strike terror into the hearts of members of the Liberty League.

The most artistic bombardment in the whole book is contained in Mr. Warburg's methodical and merciless demolition of the demagoguery of Senator Key Pittman of Nevada, arch silver champion, who attempted to answer Warburg's previous writings. The constructive note in this book is the author's optimistic appeal for the education of American citizens, which suggests the title of the work. Scornful of the slothful complacency of the average American citizen, Mr. Warburg still believes that intelligent leaders can yet make such effective use of the remaining constitutional liberties of speech and press that Americans can be aroused once more to economic sanity.

—F. X. W.

THE CHALLENGE TO LIBERTY. By Herbert Hoover. 212 pages. New York. Charles Scribner's Sons. \$1.75.

ROOSEVELT VERSUS RECOVERY. By Ralph Robey. 163 pages. New York. Harper & Brothers. \$2.

IT'S UP TO US. By James P. Warburg. 207 pages. New York. Knopf. \$2.

## Publications Received

PROCEEDINGS OF THE WESTERN MOTOR VEHICLE CONFERENCE. Published by Public Administration Service, Chicago. 1934. 60 pages.

THE COMING AMERICAN BOOM. By Major L.L.B. Angas. Published by Simon & Schuster, Inc. 1934. 35 pages. Price \$1.50.

## Other Articles Worth Reading

TRANSPORTATION POLICY. *Business Week*. October 6, 1934.

THE INEVITABILITY OF GOVERNMENT OWNERSHIP. By Thomas Woodlock. *The Annalist*. October 5, 1934.

TVA—AS I SAW IT! By Myron Rubenstein. *U. G. I. Circle*. October, 1934.

WHAT MASS ACCEPTANCE OF HOUSEHOLD APPLIANCES WILL MEAN TO INDUSTRY. *Steel*. September 17, 1934.

# The March of Events

## Gas Industry Criticizes and Supports Federal Programs

THE American Gas Association at its recent annual meeting in Atlantic City, N. J., revealed that it is "preparing further steps" to combat the Federal government's invasion of the utility field and its widespread propaganda program in support thereof.

This plan, according to *The Wall Street Journal* was revealed by Major Alexander Forward, managing director of the association, in a report on the association's work.

"There can be no doubt," Major Forward said, "that the propaganda of the Tennessee Valley Authority and the Electric Home and Farm Authority is injuring at this moment the business of every gas company in the country. . . . The advent of the electric light was a minor event compared with the danger of the program of these governmental agencies."

In a subsequent address H. O. Caster, president of the association, charged utility managements with the obligation of protecting investors in securities of their companies, by fighting false propaganda spread by municipal ownership advocates and others desiring to centralize all governmental power in the national capital.

In the opinion that some of the present utility criticism has its nucleus in too complicated procedure of regulation, Mr. Caster recommended that rate-making processes be so simplified that the representatives of the people can comprehend the procedure. "Give the public the benefit of the doubt," he recommended.

Mr. Caster also entered a defense of state regulation of utilities which, while it may not be perfect, he said, is better than any Federal regulation can be.

The government, he added, through the Tennessee Valley Authority, is now threatening ruin to all the electric and gas companies in its area. It denies that the TVA is subject to state control, which means that, regardless of the desire of the citizens of any community or state and in violation of state laws, the TVA can build plants and furnish service at whatsoever prices it chooses to charge—it can crush out its competitors and destroy millions of dollars of private capital, he declared.

While opposing the Federal government's power development policy, the association will swing its full strength into supporting the Federal Housing Administration's moderniza-

tion program, according to the *New York Herald Tribune*. Detailed plans for a national campaign enlisting the 500 manufactured and natural gas companies, 400 appliance manufacturers, and more than 1,000 dealers' organizations, were made public at the convention.

President Caster announced that two representatives of the association will be posted at Washington headquarters of the FHA. The program will be directed from the New York offices of the association. Utilities and their associated interests will contribute their own funds in local campaigns also throughout the country.

Louis J. Alber, of the FHA, told the delegates that "the home modernizing program is not intended to put the government in business. Rather it is to keep the government out of business, by stimulating the building industry. It is to be extended over a 4- to 5-year period."

John A. Fry, Detroit, chairman of the manufacturers' section, declared that 6,000,000 water heaters, 5,700,000 new ranges, and 9,000,000 refrigerators would be needed to bring American homes up to a modern standard of living.

Decentralization of industry must be expected in the United States within the next ten to twenty years, B. H. Gardner, of Columbus, Ohio, declared. "Every gas company executive who makes decisions on extending or replacing gas mains," he said, "must give this factor most careful consideration from now on."

Rising costs of operation under the NRA will force an increase in rates to the consumer in the gas industry, it was predicted by Frank L. Chase, of Dallas, Tex., chairman of the natural gas department. "In the face of generally rising prices and threatening monetary inflation, a more aggressive policy may be our only recourse," he said.

Percy S. Young, of Newark, vice president of the Public Service Electric and Gas Company, was elected president of the gas association, to succeed Mr. Caster; L. B. Denning of Dallas, Texas, president of the Lone Star Gas Company, was elected vice president of the association.

Those elected directors for 2-year terms are Addison B. Day of Los Angeles, B. J. Denman of Chicago, Henry L. Doherty of New York, O. H. Fogg of New York, Arthur Hewitt of Toronto, N. C. McGowen of Houston, Texas, William T. Rasch of New York, Thomas E. Roach of Tacoma, Wash., and Frank Roberts of Baltimore.

## Congress Cannot Regulate Pensions of Intrastate Railroad Employees

LACK of congressional power under the commerce clause of the Constitution to regulate pension systems for railroad employees not engaged in interstate commerce is a fundamental objection to the Railroad Retirement Act passed by the Congress, according to the opinion by Chief Justice A. A. Wheat of the District Supreme Court, holding the act to be unconstitutional. Another constitutional objection is based upon the due process clause of the Federal Constitution. It is held to be beyond the power of Congress to require the railroads to contribute huge sums of money to be devoted to the payment of pensions or annuities based upon services long since completed and fully paid for since this takes the property of the railroads without due process of law.

The Retirement Act applies to all employees of the railroads. It is pointed out that some 200,000, approximately one fifth of all the employees, do not work in interstate commerce, or in work so closely connected therewith as to be a part thereof. Moreover, the proof in the case showed that the Long Island Railroad Company operated entirely within the state of New York, the Illinois Central Railroad and the New York Central Railroad have a large number of employees engaged solely in intrastate commerce, and the New York, New Haven & Hartford Railroad has physical property of the value of more than \$7,000,000 which the Interstate Commerce Commission has classified as noncarrier. The situation is similar in regard to other railroads, and the employees engaged in work in connection with this property are included as beneficiaries of the act.

The decision also brings out the point that none of the parties interested in the bill, including the President, the Federal Coordinator of Transportation, and others, were entirely satisfied with the law as enacted.

At the time of writing three courses for future action appeared to be open: an appeal to the United States Supreme Court to sustain the validity of the law, amendment of the law to eliminate unconstitutional features at the next session of Congress, or the enactment of an entirely new pension law.

## Coal Men Assail Power Plans of Federal Government

THE National Coal Association, at its recent annual meeting in Washington, D. C., asked the Federal government to get out and stay out of the power business, according to the *Washington (D. C.) Evening Star*.

"The hydroelectric power development now being initiated by the Tennessee Valley Authority and other government agencies, and the St. Lawrence project, which is to be revived for action by the next Congress, is without economic or social justification," the association said in a resolution adopted at the meeting.

"On the contrary," the resolution stated, "it is both wasteful, extravagant, and destructive and ought to be halted speedily."

The association expressed its attitude on Federal hydroelectric development after Dr. Arthur E. Morgan, TVA head, had asked the association to cooperate in development of new uses for coal and challenged the industry's claim that water power cost more than electricity generated by steam.

"Instead of a campaign of denunciation, the TVA and the coal industry," Dr. Morgan contended, "should unite in selecting a body of competent, disinterested investigators to make an impartial investigation" covering the cost of government hydro and steam generation of electric power.

The association's resolution denouncing Federal activities in the power industry further stated:

"The consumption of the power program will increase unemployment instead of relieving it; will dislocate and destroy private industry instead of stimulating it; will effect direct losses of incalculable amount upon the coal industry and related business, upon the railroads, and upon the privately owned public utilities; will impose new, large, and unnecessary burdens upon the American taxpayers, and, taken in its entirety, this stupendous water-power development is calculated to retard rather than promote recovery."

Reporting as chairman of the National Job Saving and Investment Protection Bureau for the Coal Industry, George J. Leahy told the convention delegates that "not one ton of coal will be necessary in the generation of electricity if the program of hydroelectric development is continued by those planning the expenditure of two billions of dollars, whereas more than 70 per cent of all electricity generated at the present time is from plants using coal."

Mr. Leahy said that when the industry's protection bureau was first formed, it tried to cooperate with Secretary Ickes and the PWA, but Mr. Ickes wrote to the bureau that it would be a waste of his time and the bureau's time to try to stop PWA in its program, particularly with the Loup river project, to which the bureau and several national organizations protested.

The bureau is comprised of representatives of the National Coal Association and the United Mine Workers of America with its headquarters in Chicago, where Mr. Leahy is vice president of the Republic Coal & Coke Company.

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The report of the government relations committee of the National Coal Association likewise condemned the Federal hydro program and called for the association to continue its campaign of protesting against further expenditure of PWA and Federal money for more hydro plants.

### Commissioners Study Problems

FOR the first time since 1925, the National Association of Railroad and Utilities Commissioners met at Washington, D. C., November 12th to 15th. The meeting, which marked the forty-sixth annual convention of the association, received a joint welcome from the Interstate Commerce Commission and the District of Columbia Public Utilities Commission when the delegates convened at the Willard Hotel.

Among the prominent speakers scheduled to address the convention were Hon. Joseph B. Eastman, Federal Coordinator of Transportation; Hon. Melvin C. Hazen, president of the board of commissioners of the District of Columbia; Hon. William E. Lee, chairman of the Interstate Commerce Commission; Hon. Riley E. Elgen, chairman of the public utilities commission of the District of Columbia; Hon. Frank R. McNinch, chairman of the Federal Power Commission, and Hon. E. O. Sykes, chairman of the Federal Communications Commission.

Discussion of regulation of communications companies by state and Federal authorities under state laws and the Federal Communications Act was one of the most important subjects considered by the commissioners. Other subjects included on the program for discussion were the Johnson Bill, limiting the jurisdiction of the lower Federal courts in cases involving the validity of state commission orders; regulation of transportation by motor carriers upon the highways, in regard to both Federal and state regulation; and valuation, and the effect of recent judicial decisions on determination of the rate base.

### Hearings on Wire Merger

HEARINGS on the advisability of consolidating the Western Union and Postal Telegraph companies have been ordered by the Federal Communications Commission for December 3rd, according to the *Associated Press*. The hearings will embrace the advisability of consolidating or merging all telegraph companies.

In announcing them, the commission said that while Congress did not specifically direct the commission to inquire into this question, it did direct the commission to make a special report not later than February 1, 1935,

recommending such amendments to the communications law as were deemed desirable.

The commission said that the subject of mergers was one of the most important brought forward in the report of President Roosevelt's interdepartmental committee's study of communications.

During the last session of Congress legislation was proposed to legalize a merger of the Postal Telegraph Company, which is controlled by the International Telephone and Telegraph Company, and the Western Union Telegraph Company.

### Against U. S. Radio Control

A STATEMENT by Dr. Floyd W. Reeves, director of personnel, TVA, informing the Federal Communications Commission that the Authority favors governmental control and operation of radio, was promptly qualified by Arthur E. Morgan, TVA chairman, according to the *Washington (D. C.) Herald*.

Dr. Morgan said: "The Tennessee Valley Authority has not urged or favored governmental administration of radio stations. It is the opinion of the board of directors that the educational and cultural agencies of the country should have a reasonable use of the radio facilities of the country, but that all such programs should be under nongovernmental and nonpartisan control and direction."

### Truckers Oppose Federal Rule

A STAND against the placing of the trucking industry under Federal control was taken by the American Trucking Association at its recent annual convention in Chicago. The closing session was enlivened by a controversy between the major part of the association and a group of westerners who favored Federal control as a substitute for the trucking code, according to *The Chicago Tribune*.

### Plan Utilities Commission

THE British Columbia Provincial Government will create a public utilities commission to be backed by a strong public utilities act when the legislature next meets early in 1935, according to *The Canadian Telephone Journal*.

For years the Union of B. C. Municipalities has sought the creation of machinery to control public utility rates, and the Provincial Government stands pledged to adopt this policy. One of the chief planks of the government's official platform calls for a public utilities commission.

## PUBLIC UTILITIES FORTNIGHTLY

### President Seeks Expansion of TVA

PRESIDENT Roosevelt, in giving the first comprehensive insight into his future legislative program, at a recent press conference, emphasized the need for increased funds for the Tennessee valley development and expansion of similar projects in other sections of the nation, according to the *Washington* (D. C.) *Herald*.

### Former Commissioners Sued

ACTION has been entered by the present Ontario Hydro-Electric Power Commission against former Commissioners Meighen and Maguire, together with former Chief Engineer Fred A. Gaby and Hydro Solicitor Isaac B. Lucas, to recover \$4,300 expended on the authority of the former body upon detective reports, part of the alleged purpose of which was to hang something on the Ontario Liberal Party.

## Alabama

### City Moves for Rate Slash

OPENING its fight for a reduction in gas rates in Birmingham, the city has filed an application with the public service commission, in Montgomery, asking the right to intervene in a hearing on an application of

the Birmingham Gas Company for an increase in rates estimated to amount to about 26 per cent. The city asked instead that rates be reduced 25 per cent.

The city requested a delay in the hearing from November 7th, to a date between December 7th and December 20th.

## California

### City Raises Gas Rates

DOMESTIC gas rates have been increased 20 per cent and commercial rates 10 per cent by the city council despite the threat of officials of the Apartment House Owners' Association to force a referendum on the vote, according to the *Los Angeles Times*.

The gas rate increase is declared by city officials to be necessary to provide funds to balance the municipal budget.

The new rate will be effective December 1st.

It is expected to provide \$180,000 additional during the remainder of this fiscal year.

### Pacific Utility Cuts Rate

PACIFIC Gas & Electric Company will institute, for one year, reduced rates on all extra electricity used by domestic and commercial consumers on its entire system, effective following the December meter read-

ing, according to *The Wall Street Journal*.

The new rate schedule, under which consumers will be charged only one half of the regular rate for all electricity used in excess of consumption for comparable periods last year, was announced by Paul M. Downing, vice president and general manager, as a further step in the company's active coöperation in promoting home modernization under the Federal Housing Act.

Under the schedule, the consumer who last January had an electric bill of \$3, and whose use of added electric appliances, etc., increased his January, 1934, bill to \$6, will be billed for only one half of the increase, or a total billing of \$4.50.

This program, now adopted on a broad scale, is a development of some preliminary test rates which have previously applied, and also of large test on surplus power sales by San Joaquin Light & Power Company in the first half of the year which met with encouraging success. San Joaquin is a subsidiary of Pacific Gas.

## District of Columbia

### Urges Regulation of Milk

LEGISLATION which would place milk in the category of a public utility may be sought

at the next session of Congress, District Commissioner George E. Allen said recently.

Milk should be treated as a public utility, Elwood Seal, assistant corporation counsel,



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said in a summation of his milk investigation for the Senate District Committee.

Announcement of Commissioner Allen that he might seek legislation to put the milk busi-

ness in the national capital under strict public regulation came on the heels of successive victories won by the commissioner in his negotiations with distributors and producers.



### Idaho

#### Refuses Stay on Phone Rates

THE public utilities commission has refused the request of the Interstate Utilities Company for a stay of order of its recent decision that the rate being charged rural tele-

phone users was too high and setting a \$4 a year rate, according to the *Spokane Daily Chronicle*.

The new rate went into effect October 16th. The Interstate Telephone Company filed an appeal with the supreme court.



### Maine

#### Quoddy Association Formed

THE Maine Quoddy Association, an organization for the circulation of authentic information on the Passamaquoddy Bay tidal-water power project, has been formed at East-

port and will maintain headquarters in that city.

The association is similar to an organization which was active ten years ago in producing a ten-to-one vote to carry the state referendum on Quoddy's original charter.



### Michigan

#### Rate Case Returned to Court

THE rate reduction case of the Toledo Edison Company of Michigan has been sent back to the Ingham Circuit Court by the public utilities commission with no revision in its original order, according to *The Detroit News*.

The case was returned following an examination of testimony taken at a hearing before Circuit Judge Leland W. Carr. The order of the commission calls for rate reductions of 25 to 40 per cent for the 2,400 customers of the company in Monroe county.

As in the original order, the commission contended that the company must be regarded as a part of the Toledo Edison Company of Toledo, and that its rates must coincide with those of competing companies in the same area.

Judge Carr now must rule on the merits of the company's case appealing from the commission's order. An injunction by the court temporarily restrains the operation of the reduced rate schedule.

troit Edison Company in their long dispute over the company's rate schedule.

As a result of an agreement between the commission and James V. Oxtoby, general counsel for the company, a general \$1,700,000 commercial rate reduction schedule voluntarily set up by the company will stand without further challenge in the courts or the commission.

#### Utility Rates Inquiry Starts

THE state has initiated an investigation into rates charged by the Consumers Power Company, according to *The Detroit News*.

An order was issued by the public utilities commission for an audit and appraisal of the utility company's properties, which serve 179 cities in the state with gas and 238 communities with electricity. Although the investigation is expected to start soon, it probably will not be concluded before next June.

The order was issued on the petition of the cities of Owosso and Kalamazoo for reduced rates. A third reason was the company's request for approval of industrial gas rate schedules in the cities of Flint, Lansing, Pontiac, and Charlotte.

It is the first investigation ever ordered by the state into the entire Consumers Power Company system. The company will be re-

#### Reach Rate Truce

A TRUCE was reached recently between the public utilities commission and the De-



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quired to finance the investigation it is reported.

The order is the second move against the company by the state in recent weeks. Two

officials of the company await trial in the Saginaw Circuit Court on charges of constructing a gas pipe line without the approval of the utilities commission.



### Missouri

#### Seek Lower Water Rates

PETITIONS signed by hundreds of water consumers in unincorporated areas in St. Louis county were filed with the public service commission recently.

Petitioners ask a revaluation of the property of the St. Louis County Water Company to establish a new rate base and a reduction of 31 per cent to the average consumer and a reduction of 25 per cent in fire hydrant rates.



### New York

#### City Utility Tax Upheld

STATE Supreme Court Justice Schmuck upheld recently the constitutionality of the Buckley act, under which the city of New York imposed a tax of 1½ per cent of the gross monthly income of public utilities from September 1, 1933, to February 20, 1934, according to *The New York Times*. Corporations affected by the tax paid it under protest and some of them joined with the New York Steam Corporation in bringing an action to upset the law and compel the return

of the amount of taxes which had been paid.

Justice Schmuck recited that the plaintiff and other corporations had attacked the law on the ground that the city was usurping a power delegated only to the legislature, and also assailed the constitutionality of the act on allegations that it was not passed by two-thirds vote of both houses of the legislature. The court pointed out that the act "merely authorized the adoption of local laws through local legislative bodies imposing any tax which the legislature has or would have the power to impose."



### North Carolina

#### Utility Cuts Electric Rates

AN annual reduction in its rates amounting to \$154,800 to domestic and commercial consumers was announced recently by the Carolina Power and Light Company, through Stanley Winborne, utilities commissioner, according to *The News and Observer*.

The reduction will go into effect on De-

cember 1st bills and will cover November current consumption. The company serves 140 communities in North Carolina.

In addition the company will place in effect certain domestic and commercial lighting rate schedules of the inducement type which will make available to the company's North Carolina customers current with an estimated value of \$600,000 annually at no additional cost.



### Ohio

#### City Ponders PWA Request

COLUMBUS has been requested by the Public Works Administration to withdraw its application for funds to construct an extension costing \$1,000,000 to the city's municipal light plant.

The PWA pointed out that in view of the fact that the new "compromise" rate of the

Columbus Railway, Power and Light Company is lower than the present rates of the municipal light plant, there is no valid reason for approving plans for the extension.

The city is expected to counter by redrafting all plans for the light plant extension, according to the *Columbus Evening Dispatch*.

A new schedule reducing domestic current rates of the municipal light plant to a lower

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level than the "compromise" rate of the private company probably will be discussed by council and city officials.

### Bell Files Another Appeal

ASIGNING twenty-nine grounds for error, the Ohio Bell Telephone Company has filed an appeal in the state supreme court for reversal of the state utilities commission's order of September 6th, definitely ordering refunds of approximately \$12,000,000 to subscribers in forty-four communities, according to the *Columbus Evening Dispatch*.

The telephone company has three appeals pending in the state's highest judicial tribunal from orders of the utilities commission involving the determination of rates in the battle which has been raging for almost ten years.

In consequence of the company's appeal, it is anticipated that the refund ordered by the utilities commission will be held up until the court has passed upon the company's various appeals.

The company recently won a writ of prohibition in the state supreme court to prevent Common Pleas Judge George P. Baer from appointing a receiver to distribute the \$12,000,000 return to subscribers, according to the *Cleveland Plain Dealer*.

The receivership had been sought on the contention that it was necessary to protect the subscribers entitled to refunds.

The court held that the commission has the exclusive right to enforce return of excessive rates.

The utilities commission on October 25th

ordered the company to file a schedule of flat charges for its service in the Cleveland exchange area, which includes the city and twenty-seven suburbs.

The commission said the flat charge would be instituted either as a substitute for the present measured telephone rate in this area or at the option of telephone subscribers.

### Canton Accepts Rate Cut

THE city of Canton is celebrating the fourth rate reduction made by the East Ohio Gas Company since 1929, according to the *Columbus Evening Dispatch*.

The new rates mean a 10 per cent saving on gas bills for most of the city's 25,000 customers. Total annual savings to all consumers are estimated at \$86,000.

### Cities Plan Gas Purchase

THE city councils of Chillicothe, Portsmouth, Circleville, and Jackson are negotiating with the Universal Pipe Line Company for supplying 15,000,000 cubic feet of natural gas daily from West Virginia fields to their proposed municipal plants, according to *The Charleston (W. Va.) Gazette*.

The four Ohio cities have adopted ordinances for the condemnation of the present privately owned utility properties and intend to set up municipal supplies as soon as they can file completion bonds.

## Oklahoma

### Seeks New Valley Authority

REPRESENTATIVE Wesley Disney, Democrat, Oklahoma, of Tulsa, announced that he will introduce in the next Congress a \$50,000,000 Arkansas river valley flood control bill, according to *The Arkansas Gazette*.

Representative Disney said he would ask the appropriation for water improvements and flood prevention work in seven states and creation of the Arkansas Valley Authority.

"Army engineers are ready to approve the entire plan," Disney said. "All we have to prove is that there is a market for the water and water power that would serve a double purpose, along with prevention of floods."

"President Roosevelt seems to favor flood control work in his 50-year plan above all other types of permanent improvements."

States included in Disney's plan are Oklahoma, Arkansas, Colorado, Kansas, Texas, Missouri, and New Mexico.

## Oregon

### Visions of Rate Cut Hit

PORTLAND people must not expect a great reduction in their electrical rates when the

Bonneville dam power is completed and operating, J. C. Stevens, consulting engineer, told the Portland Shipping Club recently.

The cost of transporting Bonneville power

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to Portland, he said, precludes any possibility of a reduction of more than 15 per cent in rates. But the mere fact that Bonneville power is available, he declared, will serve as an effective regulator of electric prices in Portland and will always keep them at a fairly low level.

### Tax Basis Unaffected

THE recent order of Charles M. Thomas, utility commissioner, reducing the valuations of the local exchanges of the Pacific Telephone & Telegraph Company from \$24,-

208,789 to \$15,900,000, will have no direct bearing on the valuations of these properties for tax purposes, Charles V. Galloway, chairman of the state tax commission, declared, according to a statement published in the *Morning Oregonian*.

Galloway said that valuations for rate-making purposes were based upon what has gone into the properties, cost and present conditions, while the basis for taxing purposes is returns and earnings.

For rate-making purposes, he said, the value of the properties might be maintained at their last year's level or be increased for tax purposes.

## Pennsylvania

### Orders Waterway Survey

ORDERS were issued by the White House, recently looking toward broad development of Pennsylvania's water resources, according to *The New York Times*.

Agitation by Pennsylvanians for this development has been in progress for some months. The President's order, however, made no promises and set aside no funds other than for a routine preliminary survey to determine if such development was feasible.

After a conference between President Roosevelt and Pennsylvania democratic leaders, the following announcement was made:

"The President has ordered a survey and preliminary plans for the purpose of developing water resources in the upper Ohio and Delaware watersheds so that construction can be begun promptly when the projects are authorized. All dams will be of the multiple type, navigation, flood control, and power.

"The President orders immediate study by the National Resources Board of means not only to stop the decline in use of coal, but to increase it. The commission which will study this matter will consider the economic relationship between Pennsylvania's coal and New York's proposed developments on the St. Law-

rence. Inasmuch as New Jersey has neither water power nor coal, that state will be included in the survey.

"The President is deeply interested in the development of rural electrification in Pennsylvania and will ask the National Resources Board to give this development immediate consideration."

### Ex-Judge Attacks Rate Cuts

RESENTMENT at proposed government regulations which, it was declared, would adversely affect income of public utilities was expressed at the recent annual meeting of the Pennsylvania Water Works Association at Atlantic City, N. J., according to the *Associated Press*.

Former Judge H. D. Rummell, of Charleston, W. Va., called the proposals "confiscation." To reduce rates of companies under regulation, in times of adversity, he said, is to subject them to the risks of unregulated companies without allowing the income which these risks make possible.

John H. Murdock, of Washington, Pa., was reelected president of the association.

## Rhode Island

### New Rates Aid Phone Users

THE New England Telephone and Telegraph Company expected to inaugurate a new system of telephone charges in North Providence November 1st, which would bring savings of from 75 cents to \$2 to its sub-

scribers, according to *The Providence Journal*.

The reduction is made possible through the elimination of the mileage rates in certain sections. Exchange boundaries have been changed whereby present subscribers within those areas get a new rate, and new subscribers come in on the revised charge.

## South Carolina

### Commissioner Tatum Killed

THOMAS H. Tatum, chairman of the railroad commission, was killed in an automobile accident near Camden (S. C.) October 19th, according to *The Columbia Record*.

Mr. Tatum held a leading place in the field of utility commissioners, not only in South Carolina but in the southeast and the nation, through his work with the state commission. His activities had broadened in recent months

and he often was consulted by commissioners and officers from other states. In turn, seeking to bring measures that have proved successful elsewhere, he often consulted officials of other states on utility matters.

Mr. Tatum became chairman of the railroad commission last February succeeding J. H. Nance, of Cross Hill, who resigned. Before becoming a member of the commission eight years ago, he served as a member of the state legislature from Lee county.

## Tennessee

### Knoxville Purchase Delayed

ON October 31st, the deadline set for the consummation of the deal by which the Tennessee Valley Authority would purchase the Knoxville electric properties of the Tennessee Public Service Company, Judge E. F. Langford of the Davidson County Circuit Court granted a temporary restraining order enjoining the TVA from immediately purchasing the properties. The state public utilities commission had previously approved the deal. The injunction was granted on the petition of thirteen ice and coal companies who objected to the sale, and will remain in effect until the court has an opportunity to review the state commission's action, in approving the sale.

The constitutionality of the TVA activities and the legality of the Knoxville purchase contract are under attack in the suit. It was expected that the cause will come up for argument on the merits of the case next February. The state court required the petitioners to execute a \$75,000 bond to cover any losses resulting from the delay in the event that the purchase is finally sustained.

Previous to the state court's action Federal District Judge Gore had rescinded all Federal injunctions against the purchase.

City officials of Knoxville were reported to be laying plans for constructing a new and duplicate electric distribution system in Knoxville in the event that the purchase of the private company's properties is either blocked or further delayed by the state courts.

## Texas

### PWA Denies Gas Plant Loan

UNLESS the Federal government changes its policy, El Paso will not be able to obtain a Public Works Administration loan for the construction of a municipal gas distributing system, Mayor R. E. Sherman announced recently, according to *The El Paso Times*. Agency funds appropriated by the last session of Congress are practically exhausted and no loan applications have been approved since last February, according to a recent statement by Public Works Administrator Harold L. Ickes.

### Water Power Laws Passed

THE legislature has created a Texas policy of government-operated water-power production, according to *The Austin American*. The house voted final passage of the Brazos river development program for the construction of twelve storage and hydroelectric power dams under a \$50,000,000 construction program.

The Brazos bill was given a final vote of 84 to 44 in the house, and the senate, which had passed the bill previously, voted 19 to 6 to concur in house amendments.

## Virginia

### Culpeper Opens Power Plant

CULPEPER'S \$160,000 municipal light and power plant, which has the distinction of

being the first municipal plant to be erected by PWA funds, has been completed.

The power plant movement was begun by a small group nearly three years ago. The

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campaign for municipal ownership went vigorously on, and when enough signatures were

secured the election was held and resulted in a strong majority.

### Washington

#### City Seeks Federal Funds

A FEDERAL grant for the construction of a new dam and hydroelectric plant at the Upriver pumping plant and for the construction of a new south side pumping plant, has been asked by the city of Spokane.

The hydroelectric plant with the new dam would cost \$625,573.52, while the cost of the south side pumping plant is estimated at \$288,115.70.

The new hydroelectric plant would be

equipped with three 1,800-horsepower generators which would operate to capacity, except in low-water periods. The power generated would be used in pumping water.

The Federal emergency administration of public works is asked to contribute \$273,505 or 30 per cent of the cost. The remaining 70 per cent of the construction cost would be paid by the city water department. It is considered probable the government would agree to purchase water department bonds for the city's 70 per cent.

### Wisconsin

#### Drops Municipal Plant Plans

THE Stoughton city council recently voted to drop plans for construction for a municipally owned Diesel engine plant as an auxiliary power source, despite the fact that the proposal carried in a referendum vote, and bonds totaling \$80,000 to finance the venture already had been sold, according to *The Wisconsin State Journal*.

The action, it was believed, was prompted by a suit brought by the Stoughton Taxpayers' Association seeking to restrain the city from going into the power business. The plan, which carried in the referendum August 9th by a vote of 712 to 528, had been hotly contested from the start.

The association in fighting the proposal contended that the new bond issue would exceed the constitutional debt limit. The resolution passed by the council provided that the bonds will be called back if the taxpayers' suit is withdrawn.

The present plant, which obtains power

from three dams on the Yahara river, is supplemented by service from the Wisconsin Power and Light Company, since the municipal power is not always sufficient.

#### Madison Equals TVA Rates

THE Wisconsin Public Service Commission compared residential electric rates in Madison, Manitowoc, and Menasha, where they are the lowest in the state, recently to show that they closely approximate those of the TVA, Federal yardstick for measuring electrical costs, according to *The Wisconsin State Journal*.

"Menasha's smaller consumers who do not use more than 17 kilowatt hours a month have lower rates than TVA residential schedules, while in Manitowoc the rates are lower than TVA rates for all customers using 21 or less kilowatt hours monthly," the commission pointed out.

### Wyoming

#### Power Project Starts Dispute

ADMINISTRATOR Harold L. Ickes of the Public Works Administration recently acknowledged that the \$22,700,000 Casper-Alcova project in Wyoming had precipitated

a controversy over water rights which will require consideration."

However, Mr. Ickes said the allocation would not be rescinded, as was done under similar circumstances in the case of the \$19,000,000 Rio Verde project.

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# The Latest Utility Rulings

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## Intercompany Payments Attacked by Oregon Commissioner

COMMISSIONER Charles M. Thomas of Oregon has ordered a reduction of 8 to 10 per cent in the rates of the Pacific Telephone & Telegraph Company for local exchange service. Justification for the rate reduction was based partially upon the disallowance of payments to the American Telephone and Telegraph Company. The annual fee was condemned, and the commissioner ruled that the holding company must present an itemized statement of the services rendered based on their actual cost.

The method of making payments based on gross earnings was said to be improper, although the holding company might render valuable services. Moreover, the commissioner expressed the opinion that contributions for development and research are not proper charges against operation, as the benefits are realized by the parent company and affiliates and not by the telephone company's subscribers.

The return of the telephone company, after adjustments by the commissioner, was found to be 7.34 per cent, which

was declared to be greater than like businesses received. The new rates were expected to earn a return of from 5.25 to 6 per cent. This was said to be fair in view of the general business decline.

The rate base submitted by the company was slashed. Commission engineers declared that the plant facilities were overbuilt to the extent of some \$3,000,000 to \$4,000,000 as evidenced by decreasing public demand for service. They pointed to the fact that in 1930 there were 142,385 stations, and in 1933 there were only 110,109. It was contended that construction of plant facilities to 150,000 possible stations constituted an excess.

Additionally it was ruled that subscribers in Portland should not be required to absorb an operating loss sustained in the rest of the state. Commissioner Thomas pointed out that the West Coast Company in other parts of the state had been able to operate at a profit, while the Pacific Company was operating at a loss in such territory. *Re Pacific Telephone & Telegraph Co.*



## Property Valuation without Evidence Denies Due Process

A TEMPORARY injunction has been issued in Federal court restraining the Missouri commission from enforcing its order for the Laclede Gas Light Company of St. Louis to reduce rates \$212,000 annually. The court stated that upon the facts the commission undervalued the company's used and useful property and "to value property for rate making without evidence is denial of due process."

The commission found the value of the company's property to be \$39,062,-

000, although the company contended that the value was not less than \$51,000,000. The commission allowed 6½ per cent for fair return.

It was urged by the commission and the city of St. Louis that the order should be permitted to go into effect because it was intended only to be temporary, but the court pointed out that the order itself was not so limited, and, "moreover, the constitutional prohibition against the taking of property without due process of law contains



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no exception permitting a taking of some property or taking during a limited period of time." In granting the temporary injunction, the court said that if the company were compelled to abide by the order pending final hearing, and

if that final hearing resulted in a permanent injunction, the company would have suffered a substantial and irrecoverable loss, confiscatory in its nature. *Laclede Gas Light Co. v. Public Service Commission of Missouri.*



### Differentials in Extension Telephone Rates Are Sustained

THE Pennsylvania commission has dismissed a complaint against telephone extension rates differing for business flat rate stations, residence flat rate stations, and corresponding message rate stations, holding that the complainant had not sustained the burden of proof to show that the charges were unreasonable.

The charges for flat rate stations were \$1 monthly for business telephones and 75 cents monthly for residence telephones, while the extension rates for message rate stations were 75 cents monthly for business and 50 cents monthly for residence telephones. The commission said:

The differential between rates for extension telephones is based on the theory, and experience supports the theory, that an extension telephone in connection with flat rate business service is worth to the subscriber more than it is in connection with

flat rate residence service. Similarly, it is worth more when used in connection with flat rate service than when it is used in connection with message rate service. Respondent regards an extension station as a separate element of service, and as such it has a value.

In support of these charges, respondent contends that rates for flat rate telephone service are based upon the use of one instrument, and that any additional instruments, supplied at the subscriber's option and for his convenience, tend to add to the use of the telephone service. In the case of message rate service, the compensation for the increased use of the service is obtained by means of the making of a charge for each message, in addition to the monthly charge for the additional instrument, while in the case of flat rate service, the only additional compensation which can be had is the monthly charge for the second instrument.

*Barnett v. Bell Telephone Co. of Pennsylvania (Complaint Docket No. 10182).*



### Authority for Intrastate Service Held Necessary Condition of Interstate Transportation

WHETHER an applicant for authority to operate an interstate motor carrier service through a particular state must also seek state authority to operate an intrastate service has not been conclusively settled in all jurisdictions. The decision has hinged upon the question of state recognition and enforcement of the Code of Fair Competition for the Motor Bus Industry.

One section of the code provides that passenger motor carriers establishing any new bus operation or extending any motor bus operation after the date of the approval of the code shall secure a

certificate of convenience and necessity or permit from each and every state in which operation is conducted authorizing intrastate transportation along the route or routes of such new operation or extension of existing operation.

The Colorado commission and the Indiana commission refused interstate operating authority to applicants who had not complied with the code. The Rhode Island commission held that enforcement of the Motor Bus Code was outside of the authority of the state body, and therefore it granted operating authority for interstate service, leaving

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the question of code enforcement to other authorities.

The Utah commission has now followed the example of the Colorado and Indiana commissions and denied an interstate license to an applicant who did not seek a certificate for intrastate operation and who had no intention of doing so.

Another element, however, enters into the decision by the Utah commission.

It is pointed out by that body that the Utah legislature in 1933 passed an Industrial Recovery Act wherein the policy of the state was declared to be in accord with the policy of the President of the United States and the agencies set up by him under the provisions of the act of Congress known as the National Industrial Recovery Act. *Re National Bus Lines, Inc. (Case No. 1590).*



### Excess Electric Charges Computed for Customers Outside of City

THE Missouri commission, in determining proper charges to be assessed by an electric utility against customers located outside of Jefferson City, disapproved variable charges for different classes of such customers. It approved charges computed specially for this group instead of the regular rural rates, since the customers concerned were not what are ordinarily known as rural customers living on the larger acreages of farm land. They were more properly classified as suburban customers residing on small acreage tracts adjacent to the city.

The company proposed monthly charges to cover the excess cost of serving these customers. The commission approved the purpose, but disapproved the method, of computing the extra charge. One of the proposals which was disapproved was to assess a different minimum bill against three different classes of these suburban customers, varying according to transformer core loss. The commission said that it appeared unnecessary to break up the transformer loss into the three groups because rates cannot be made for every customer, nor should the refinement be made to the extent suggested by the utility company. It was said to be more satisfactory to make the transformer loss charge uniform to all the customers.

The commission also expressed the opinion that the entire transformer loss should not be applied against these customers because there would in any event be some transformer loss in serving customers within the city. On this point the commission said:

Because of the better loading possibilities of a particular transformer and the diversity of the use of the service within the city the loss of energy in the transformer per kilowatt hour sold is less than what the defendant will experience in serving the customers on Boonville road. The data submitted by the defendant shows that a 3-kilovolt ampere transformer is used to serve three of the customers in this case, another 3-kilovolt ampere transformer is used to serve four of them, and a 5-kilovolt ampere transformer is used to serve eight of them. In the city area a much greater loading of a transformer, in so far as numbers are concerned, may be made so that it appears reasonable to charge only two thirds of the loss in the transformer as excess charge to these customers.

Allowances proposed in the excess charge were 7 per cent for interest on the value of the property and 5 per cent for depreciation in the computations by the company, but the commission held that there should be allowed  $6\frac{1}{2}$  per cent for return and 4 per cent for depreciation. *Kauffman, et al. v. Missouri Power & Light Co. (Case No. 8775).*



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### Obligation of City to Outside Water Users

THE obligation of a municipal water plant to serve customers outside the city is not more extensive than its obligation to customers within the city, according to a ruling by the Montana commission. The commission authorized the city of Laurel to abandon a system of wooden water mains in a subdivision over the objection of water users outside of the city who had been receiving their supply through the wooden mains.

The city a few years ago annexed the subdivision and took over the wooden mains. These mains became so deteriorated that the residents in the subdivision sought a new system of mains constructed of cast iron. At their request the new mains were laid in streets rather than in alleys where the wooden mains were located. This was because of proximity to sewers in the alleys.

The cast iron mains were installed with the aid of the Federal Civil Works Administration. The cost, so far as it was not borne by the Federal agency, was assessed against property owners, and those who wanted water paid for their connections with the new system of mains.

A few users of water outside the city, however, insisted that they had the right to demand a continuance of their water supply through the old wooden mains. They had connected with these mains at their own expense. The commission held that they had no right to demand this service, but that the municipality would fulfil its obligations to outside users if it permitted them to connect with the new water mains on the same basis, at their own expense, as users in the subdivision. *Re City of Laurel Water Works (Docket No. 1758, Report and Order No. 1654).*



### Low Rates Must Not Discriminate

CUTTING rates is a matter that is most seriously regarded, said the Arizona commission in a recent opinion holding that operating authority should be revoked in the case of a motor carrier deviating from the rate schedule. Low rates are not to be obtained at the expense of equal and fair treatment. The commission continued:

While the commission is here to see that the public secures rates which are as low

as are consistent with dependable operations, it is elementary that common carriers should charge one rate to all and that said rate should be and is the rate contained in their tariffs which are required to be kept on file with this commission. The cutting of rates to some people is a gross discrimination by which some of the public are carried at lower rates than others and which results in demoralizing the sightseeing business generally.

*Re Hailey (Case No. 1405, Decision No. 5890).*



### Other Important Rulings

THE Colorado commission has held that the Motor Bus Code requirement that intrastate operations by a motor carrier must be authorized in connection with authority for interstate operation does not apply to operating authority for interstate service which was begun prior to the effective date of the

code. *Re Inland Pacific Stages (Application No. 2055, Decision No. 5849).*

The Colorado commission has held that although interstate operation is not a reason for authorizing intrastate operation without a showing of public convenience and necessity, still in con-